

**REPORT ON THE
ALABAMA STATE BOARD OF
VETERINARY MEDICAL
EXAMINERS**

Decatur, Alabama



**Department of
Examiners of Public Accounts**

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June 9, 2004

Representative Howard Sanderford
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Representative Sanderford,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Alabama State Board of Veterinary Medical Examiners** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Alabama State Board of Veterinary Medical Examiners**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

Ronald L. Jones
Chief Examiner

CONTENTS PAGE

	<u>Page</u>
PROFILE	1
PURPOSE/AUTHORITY	1
BOARD CHARACTERISTICS	1
OPERATIONS	2
FINANCIAL	4
SIGNIFICANT ITEMS	5
STATUS OF PRIOR FINDINGS	6
ORGANIZATION	7
PERSONNEL	7
PERFORMANCE CHARACTERISTICS	7
VETERINARY PROFESSIONAL WELLNESS PROGRAM	10
FINANCIAL INFORMATION	11
SCHEDULE OF FEES	11
SCHEDULE OF OPERATING RECEIPTS, DISBURSEMENTS, AND BALANCES	12
OPERATING RECEIPTS VS OPERATING DISBURSEMENTS (CHART)	13
QUESTIONNAIRES	14
BOARD MEMBER QUESTIONNAIRE	14
VETERINARIAN QUESTIONNAIRE	17
LICENSED VETERINARY TECHNICIAN QUESTIONNAIRE	23
COMPLAINANT QUESTIONNAIRE	28
APPENDICES	33
STATUTORY AUTHORITY	33
BOARD MEMBERS	157

PROFILE

Purpose/Authority

The Board of Veterinary Medical Examiners was created by Act 86-500, *Acts of Alabama 1986*. The purpose of the board is to regulate the practice of veterinary medicine and to require the licensing of veterinarians and veterinarian technicians. The *Code of Alabama 1975*, Sections 34-29-60 through 34-29-94, provides the current statutory authority for the operations of the board. In addition, the *Code of Alabama 1975*, Sections 34-29-110 through 34-29-111, which address the professional veterinary wellness program, and Sections 20-2-1 through 20-2-93, which address controlled substances, also apply to the board.

Board Characteristics

Members	8 <ul style="list-style-type: none">• 6 Licensed veterinarians,• 1 licensed veterinary technician and• 1 consumer member
Term	<ul style="list-style-type: none">• 4 years with members serving until a successor is appointed and qualified• Term limits—no more than two consecutive four year terms, no more than a maximum of 13 years total• Staggered terms are not provided for in the law.
Selection	Appointed by the Governor from a list of three nominees submitted by the Alabama Veterinary Medical Association
Qualifications	Each of the 6 veterinarian board members must; <ul style="list-style-type: none">• Have graduated from an accredited school of veterinary medicine,• Be a legal resident of Alabama,• Be actively licensed—including acquiring 20 credit hours of continuing education per year,• Be employed and licensed for five years immediately proceeding the appointment,• Practice at least 35 hours per week while serving on the board, The veterinary technician board member must; <ul style="list-style-type: none">• Be actively licensed—including acquiring 8 credit hours of continuing education per year.

Racial Representation	No statutory requirement. 1 Black male
Geographical Representation	No statutory requirement
Consumer Representation	Statutory requirement for one consumer member. Board includes one consumer member.

Operations

Compensation	\$100.00 per day for transacting board business. Board members receive travel expense reimbursement at the same rate as state employees.
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Administrator	Theresa S. Chandler, Executive Director Appointed by the board at an annual salary of \$65,600. Salary set by the board
Location	2128 6 th Avenue SE, Phase V Suite 501 Decatur, AL 35601
Type of License	<p>Veterinarian licenses, veterinary technician licenses, temporary permits, and veterinary premise permits. Licensees and permits as of January 1, 2004</p> <p>Veterinarian:</p> <ul style="list-style-type: none"> • Current Active.1,415 • Current Inactive.341 • Non-active*.3,621 Total Veterinarian Licenses5,377 <p>Veterinary Technician:</p> <ul style="list-style-type: none"> • Current Active.177 • Current Inactive.18 <ul style="list-style-type: none"> • Non-active*.262 Total Veterinary Technician Licenses.457

	<p>Temporary Permits:</p> <ul style="list-style-type: none"> • Current Active.1 • Expired.44 <p>Total Temporary Permits. 45</p> <p>Premise Permits:512</p> <p>*Pending, suspended, revoked, dormant or deceased.</p>
Renewal	<p>All licenses expire annually on December 31.</p> <p>30 day grace period to renew.</p> <p>Late penalty after grace period. Notification of late penalty sent by certified mail.</p> <p>Revocation of license if license is not renewed ten days after certified mail return receipt is received,</p> <p>An expired license may be renewed any time within two years, upon application and payment of each delinquent year's renewal fee and late penalty, if otherwise eligible for licensure.</p>
Examinations	<p>Veterinarians:</p> <p>National examination (North American Veterinary Licensing Examination [NVALE]) given twice annually at Sylvan Learning Centers throughout the state.</p> <p>State Board examinations given quarterly in conjunction with board meetings, usually in Montgomery.</p> <p>Veterinary Technicians:</p> <p>National examination (Veterinary Technician National Examination [VTNE]) given the third Friday each January and June.</p> <p>State Board examinations given quarterly in conjunction with board meetings, usually in Montgomery.</p>

Continuing Education**Veterinarians**—20 Credit hours per year**Veterinary Technicians**—8 Credit hours per year**Reciprocity**

License may be issued without a written examination to persons:

- Who are graduates of accredited veterinary schools
- Who practiced for five years preceding application as veterinarians licensed in a state, territory, or district of the United States having license requirements at the time the applicant was first licensed which were substantially equivalent to Alabama's requirements.

The board has not issued any reciprocal licenses.

Employees

5 Total

1 Unclassified Merit System

1 Classified Merit System

3 Under contract

There are no minority employees

Legal Counsel

Attorney General's Office

Subpoena Power

Can subpoena witnesses and records

Financial**Attended Board Member Training**

Executive director, 3 board members, one employee

Source of Funds

Licensing fees

State Treasury

Yes

Unused Funds

Retains unexpended funds.

SIGNIFICANT ITEMS

1. **Legislation Introduced to License and Regulate Veterinary Euthanasia Technicians.** For the past two years and currently, legislation has been introduced to create the separate licensure of certified euthanasia technician under administration of the board.

A 2002 informal survey by the American Association of Veterinary State Boards obtained the following results:

- 16 responded that the state's veterinary board or another state entity certified veterinary euthanasia technicians (AR, CA, CO, IA, ID, KY, LA, NV, OH, OK, OR, SC, TX, UT, WA, and WV)
- 15 responded that veterinary euthanasia technicians were not certified. (CT, DE, GA, MA, ME, MN, MO, MS, MT, NE, NH, NJ, PA, WA, and WY). Legislation was pending in AK, AL, RI.
- 16 states did not respond to the survey.

In April, 2003, The Executive Director of the Alabama State Board of Veterinary Medical Examiners informally requested information from other states concerning their experience with certifying euthanasia technicians. Of the responses, two issues were raised:

- (1) Animal control officers expressing resentment of an additional state agency regulating them, and
- (2) The difficulty of having to interact as a regulatory agency with local and county government councils or commissions and non-profit organization boards to certify euthanasia technicians.

The current bill, Senate Bill 41, would:

- Authorize the board to promulgate rules and regulations relating to the purchase, possession, storage and use of controlled substances utilized for euthanizing animals,
- Specify persons authorized to purchase, possess, store and use the controlled substances used for euthanizing,
- Establish the qualifications of persons who may euthanize animals,
- Provide for a euthanasia technician certification course
- Provide for licensure of euthanasia technicians,
- Provide for licensure and approval of facilities that employ euthanasia technicians
- Provide for the revocation or suspension of license,
- Authorize law enforcement official or veterinarians to euthanize animals in case of dangerous or emergency situations,
- Authorize the Attorney General to enjoin violations of the act, and
- Provide Class B misdemeanor penalties for violations of the act.

2. **Issues of concern to licensees.** Licensees expressed concern over the following issues when responding to a questionnaire.

- **Use of Untrained, Unlicensed Assistants.** Forty-two percent of licensed veterinary technicians and one board member voiced concern in questionnaire responses about the continued use of unlicensed, untrained personnel in veterinary clinics. The opinions expressed maintain that untrained personnel pose a threat to the public's health and that, by calling themselves veterinary technicians, they undermine the credibility of licensed veterinary technicians
- **Over The Counter And/Or Internet Sales Of Veterinary Medicine.** Fourteen percent of veterinarians responding stated that the ability of persons to purchase medicines on the Internet, through mail order companies, or over the counter at feed and other supply stores without a prescription or without an examination of their animal poses a detriment to the public's health.

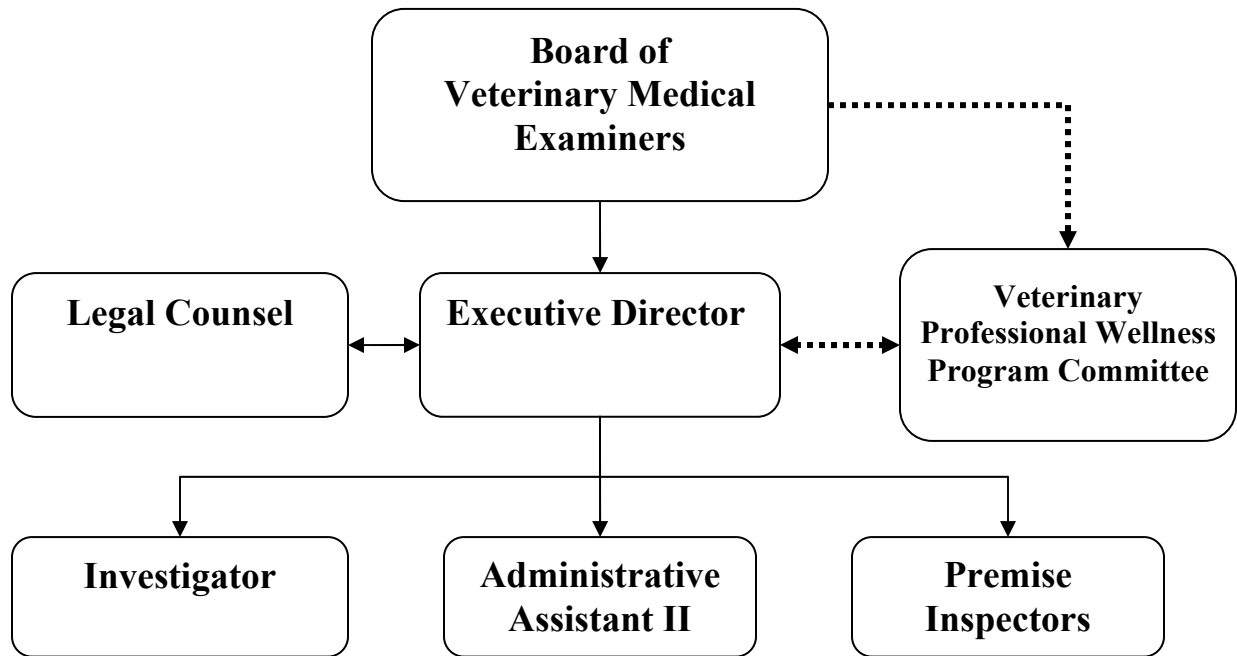
According to the board's executive director, veterinary pharmaceuticals being sold by mail order and Internet companies continue to be a source of complaints and investigations for the board. The executive director indicated that many such companies encourage their customers to complain against veterinarians who will not write prescriptions for the customers to purchase drugs from mail order or Internet companies. The executive director stated that there is no requirement for veterinarians to provide prescriptions in written form, so there is no clear violation of law or rules by veterinarians who choose not to write prescriptions for client use.

- **Level Of Pay for Veterinary Technicians Viewed As Insufficient.** Twenty-four percent of licensed veterinary technicians responding stated that the pay received by licensed veterinary technicians is too low. Technicians express concern that with the continued use of unlicensed assistive personnel there is little incentive for veterinarians to adequately pay technicians, and without adequate compensation, little incentive for technicians to stay in the profession.

STATUS OF PRIOR FINDINGS

There were no findings in the previous examination of the board.

ORGANIZATION



PERSONNEL

The board presently employs 5 persons, consisting of an executive director who is an unclassified merit system employee, one classified merit system employee, one contract investigator and 2 contract inspectors. The executive director is appointed by the board. The Attorney General's Office provides legal services for the board.

<u>Classification</u>	<u>Number of Employees</u>	<u>Race</u>	<u>Gender</u>
Executive Director	1	White	Female
Administrative Support Asst II	1	White	Female
Inspector (Contract)	2	White	Male
Investigator (Contract)	1	White	Male
Total	5		

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee – 493

Total Expenditure per Licensee (2002-2003 fiscal Year) - \$113.34

Number of Persons per Licensee in Alabama and Surrounding States

State	Population Estimate	<u>Licensees</u> Persons per Licensee					
		Veterinarians	Veterinary Technicians	Facilities (1)	Faculty	Euthanasia Technicians	CACA (2)
AL	4,500,752	<u>1756</u> 2,563	<u>195</u> 23,081	<u>512</u> 8,791	0	0	0
FL	17,019,068	<u>6,173</u> 2,757	<u>650 (3)</u> 26,183	<u>1,634</u> 10,456	0	0	
GA	8,684,715	<u>3,049</u> 2,848	<u>213</u> 40,773	0	<u>155</u> 53,030	0	0
MS	2,881,281	<u>982</u> 2,934	<u>85</u> 33,987	0	(4)	0	0
TN	5,841,748	<u>1,545</u> 3,781	<u>282</u> 20,715	<u>525</u> 11,127	0	<u>107</u> 54,596	<u>37</u> 157,885

1. Includes mobile facilities.
2. Certified Animal Control Agency
3. Florida's veterinary medical association certifies veterinary technicians
4. Faculty is included in the veterinarian licensees.

Notification to Licensees of Board decisions to Amend Administrative Rules

The board complies with requirements prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly and public hearings on proposed rules. Licensees are further notified of proposed changes through notices posted in the board's newsletter (*The Examiner*), which is sent to all active licensees, and through the Alabama Veterinary Medical Association's newsletter (*The Alabama Veterinarian*), which is sent to all association members.

Complaint Resolution

Complaints Received In		Complaints Resolved or Dismissed In				Pending
		2000	2001	2002	2003	
2000	29	20 (1)	11	0	1	
2001	46	0	35	10	0	1
2002	57	0	0	36	17	4
2003	47	0	0	0	34	13

(1). Includes 3 cases received in 1999

Complaint Process

Initial Documentation Initial contact is most frequently made by phone or e-mail. Staff completes an Incident Reporting Form and mails a Complaint Form to the complainant for completion and return. The written, signed complaint is considered the official complaint and is received and filed at the board's office.

Anonymous Complaints The board does not pursue anonymous complaints.

Investigations Performed by Executive director, investigator, legal counsel and/or and assigned board member who acts as a chief investigative officer

Investigation Process

1. The complaint is acknowledged in writing,
2. The complaint is assigned to a board member who acts as chief investigative officer,
3. A written request is mailed to the veterinary professional in question asking for medical records and statements from key personnel involved,
4. All information is compiled and mailed to the chief investigative officer, investigator and legal counsel
5. If probable cause can be determined from the information, the investigation proceeds with statements and additional fact finding, as necessary,
6. If probable cause cannot be determined, the case is dismissed,
7. At the end of the investigatory process, a report of findings and facts is written and if applicable, lesser disciplinary actions, including private reprimands or consent agreements, are taken,
8. If lesser discipline is not applicable or the licensee declines to enter a consent agreement, the case is

presented to the board and an administrative hearing is held.

9. The results of all complaints and the actions taken are reviewed by the board in board meetings.

Disposition of Complaint if formal hearing not held	Dismissed if no probable cause established.
Investigating board member's status during hearing	If probable cause can be established, a disciplinary consent agreement is offered to first time offenders. Member recuses him- or herself from disciplinary procedures, if the complaint requires a hearing.

VETERINARY PROFESSIONAL WELLNESS PROGRAM

The Alabama Veterinary Professionals Wellness Program was established in April 2001 and is sponsored by the Alabama State Board of Veterinary Medical Examiners and the Alabama Veterinary Medicine Association (ALVMA), under a contract with the Medical Association of the Alabama. The program is assisted and supervised by the Alabama Veterinary Professionals Wellness Committee, a group of 15 veterinary professionals nominated by the ALVMA and appointed by the board to serve for 3 years each.

The program receives confidential referrals from a variety of sources to promote early identification of problems that can cause impairment, including substance abuse and related disorders, mental and/or behavioral conditions and other problems. The wellness program is an alternative to administrative discipline.

	2001	2002
Participants		
Board Referred	2	4
Colleague Referred	3	4
Self Referred	6	3
Resolutions		
Interventions	4	10
Monitoring Agreements	3	7
Evaluation	3	10
Reevaluation	1	0
Treatment	2	5
Pending Investigation	1	0
In Recovery	5	0
Observation	0	5

Some participants experience multiple resolutions

FINANCIAL INFORMATION

Schedule of Fees

The *Code of Alabama 1975*, Section 34-29-69(11) authorizes the board to set fees. The following fees have been set.

2004 Fee Schedule Effective October 1, 2003

<u>Fee</u>	<u>Administrative Rule</u>	<u>Amount</u>
Veterinarians		
Certification for Eligibility for NAVLE* (application fee) (Cost of NAVLE is \$325 direct to NBVME*)	930-X-1-.06	\$150.00
Annual Renewal of License	930-X-1-.06	\$150.00
Late Renewal Penalty	930-X-1-.06	\$300.00
Temporary License	930-X-1-.06	\$100.00
Reinstatement of License	930-X-1-.06	\$100.00
Annual Controlled Substance Registration Number	930-X-1-.06	\$25.00
Annual Renewal of Inactive License	930-X-1-.06	\$75.00
Late Renewal of Inactive License Penalty	930-X-1-.06	\$150.00
Original Premise Permit and Annual Renewal	930-X-1-.06	\$100.00
Late Renewal Premise Permit Penalty	930-X-1-.06	\$300.00
New Hospital, Clinic, Mobile Unit or Change of Ownership Inspection	930-X-1-.06	\$100.00
Veterinary Technicians		
Application and Examination	930-X-1-.06	\$150.00
Annual License Renewal	930-X-1-.06	\$50.00
Late Renewal of License Penalty	930-X-1-.06	\$100.00
Annual Renewal of Inactive License	930-X-1-.06	\$25.00
Late Renewal of Inactive License Penalty	930-X-1-.06	\$50.00
Ancillary Services		
Verification of License Fee	930-X-1-.06	\$25.00
Copy of Veterinary Practice Act	930-X-1-.06	\$15.00
Directories of Licensing Information	930-X-1-.06	\$25.00
Certified Renewal Notices	930-X-1-.06	\$15.00
Duplicate Licenses or Certificates	930-X-1-.06	\$25.00

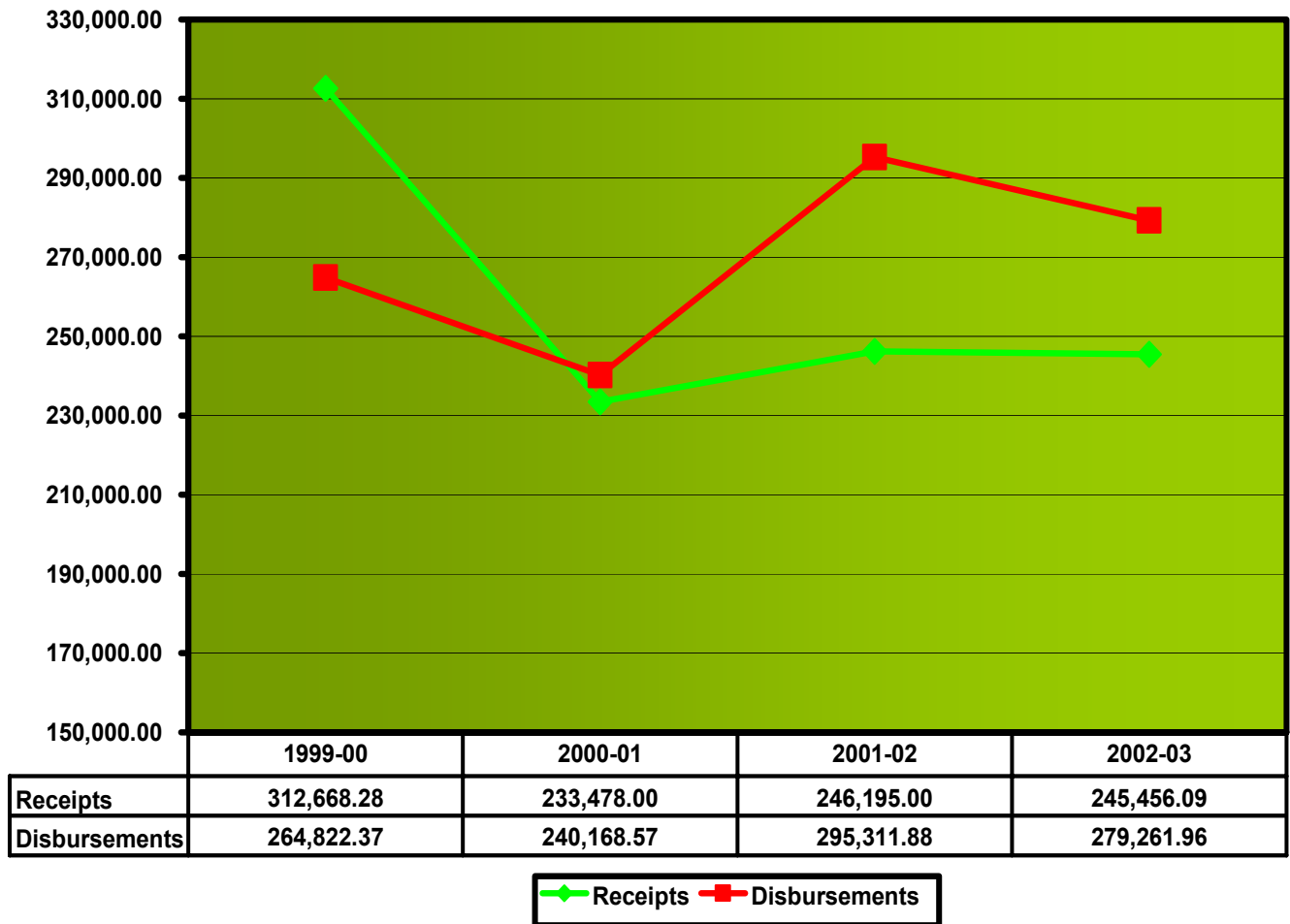
*North American Veterinary Licensing Examination (NAVLE), National Board of
Veterinary Medical Examiners (NBVME)

Schedule of Operating Receipts, Disbursements, and Balances

October 1, 1999 through September 30, 2003

	2003-03	2001-02	2000-01	1999-00
Receipts				
Licensing Fees	\$245,456.09	\$246,195.00	\$233,478.00	\$312,668.28
Disbursements				
Personnel Costs	136,747.88	110,546.44	106,142.76	94,226.80
Employee Benefits	27,596.38	22,312.56	20,801.42	18,760.27
Travel-in-State	20,147.05	17,288.09	17,383.65	16,925.87
Travel-out-of-State	1,187.51	4,479.25	7,465.28	2,261.33
Repairs and Maintenance	913.00	550.00	539.00	2,618.00
Rentals and Leases	19,217.39	19,729.54	18,261.90	20,895.02
Utilities and Communications	7,802.49	8,131.84	8,134.95	6,412.14
Professional Services	23,098.07	53,190.22	14,698.29	3,362.40
Supplies, Materials and Operating Expense	41,780.31	57,620.34	41,791.40	99,084.56
Transportation Equipment Operations	772.10	1,463.60	1,202.92	275.98
Equipment Purchases	0.00	0.00	3,747.00	0.00
Total	279,262.18	295,311.88	240,168.57	264,822.37
Excess (Deficiency) of Receipts Over Disbursements	(33,806.09)	(47,116.88)	(6,690.57)	41,845.91
Cash Balance at Beginning of Year	73,506.85	122,623.73	129,314.30	81,468.39
Cash Balance at End of Year	39,700.76	73,506.85	122,623.73	129,314.30
Reserve for Year End Obligations	(20,845.85)	(29,451.82)	(22,563.40)	(16,588.87)
Unobligated Cash Balance at Year End	\$18,854.91	\$44,055.03	\$100,060.33	\$112,725.43

Operating Receipts Vs Operating Disbursements (Chart)



QUESTIONNAIRES

Board Member Questionnaire

Questionnaires were mailed to all eight board members. Six responded.

Question #1

What are the most significant issues currently facing the Board of Veterinary Medical Examiners and how is the board addressing these issues?

Respondent 1—"Usually varied client complaints against professional veterinarians. The Board, I feel, addresses these issues very professionally by reviewing all aspects and providing professional advice when such is deemed needed, also supervision of license to practice if merited for limited time frames."

Respondent 2—"Timely disposition of complaints. An inspector/investigator has been hired."

Respondent 3—"Licensing veterinarians and disciplinary issues. We address each of the issues at our quarterly meetings. Also impaired veterinarians treatment is under the Board."

Respondent 4—"One of the most common complaints we receive is the use of unauthorized personnel in the practice of veterinary medicine. Through the use of education and discipline, the Board hopes to change the trend."

Respondent 5—"The number of cases coming before the board continues to increase, which puts a greater burden on the Board's time and resources. The board continues to look for ways to deal with this, the number of meetings per year have been reduced as one way to decrease expenditures."

Respondent 6—"The most significant issues are violations by veterinarians and the investigation of those violations. The Board has hired an investigator to help combat these problems."

Question #2

What changes to the Board's laws are needed?

Respondent 1—"I am fairly new and have not found any faults or reasons for changes yet."

Respondent 2—"None known to me."

Respondent 3—"None."

Respondent 4—"I can't think of any at this time. If the recommendations from the Board as presented to the ALVMA (Alabama Veterinary Medical Association) [are accepted] they will be incorporated into the practice act."

Respondent 5—"I believe changing continuing education and license renewal from annual to biennial would reduce costs and be better received by veterinary professionals. The Board is already discussing this."

Respondent 6—"None"

Question #3

Is the Board adequately funded?

5 Yes

0 No

1 Unknown

0 No Opinion

Respondent 4—"Tight but adequate"

Question #4

Is the Board adequately staffed?

4 Yes

1 No

1 Unknown

0 No Opinion

Respondent 1—"They probably could use more help."

Respondent 4—"For the most part, yes. There is an extra need for help at renewal time at the end of the year."

Respondent 5—"Except during license renewal time. Some part time help might be helpful at that time of the year."

Question #5

What is the purpose of your fiscal year end balance of unobligated funds?

Respondent 1—"I am not sure about this item."

Respondent 2—"Carry over to next year. Guaranteed funding is uncertain."

Board Member Questionnaire

Respondent 3—"Carry over."

Respondent 4—"For emergency use, otherwise roll over to the next year."

Respondent 5—No response

Respondent 6—"Unexpected expenses or decreases in budget income."

Veterinarian Questionnaire

Questionnaires were mailed to one hundred veterinarians. Fifty-one responded.

Question #1

Do you think regulation of your profession by the Alabama Board of Veterinary Medical Examiners is necessary to protect public welfare?

48 Yes 2 No 0 Unknown 1 No Opinion

Question #2

Do you think any of the board's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

9 Yes 42 No 0 Unknown 1 No Opinion

- One respondent answered both yes and no.

Respondent 31—"Nit picky requests like a door sweep underneath an x-ray room door when all products (x-rays and films) were already approved for quality."

Question #3

Do you think any of the Board's requirements are irrelevant to the competent practice of your profession?

5 Yes 43 No 2 Unknown 1 No Opinion

Respondent 31—"CE, frequency of inspections—should be no more than every 4 – 5 years."

Question #4

Are you adequately informed by the Board of changes to and interpretations of Board positions, policies, rules and laws?

42 Yes 4 No 3 Unknown 2 No Opinion

Question #5

Has the Board performed the following in a timely manner?

Licensing 49 Yes 0 No 2 No Opinion

Renewal 51 Yes 0 No 0 No Opinion

Respondent 11—"Could probably be improved."

Respondent 31—"Too frequently. Looks more like a money making apparatus than protecting the public interest."

Question #6

Do you consider mandatory continuing education necessary for competent practice?

45 Yes 6 No 0 Unknown 0 No Opinion

Respondent 2—"Strongly agree"

Respondent 7—" (but not 20 hours) 15 like every other state would be nice and save me a lot of money."

Respondent 8—"Not for everyone. Some of us still like to learn and read even without requirements."

Respondent 31—"What a joke"

Question #7

Has the Board approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

48 Yes 1 No 0 Unknown 2 No Opinion

Respondent 31—"Any CE approved by any board in the U.S. should be approved."

Question #8

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Board doing to address the issue(s)?

Respondent 1—“Providing services at a level expected by public at a cost it can afford. Nothing the Board can do about that.”

Respondent 2—“BSE [bovine spongiform encephalitis] and its effects on beef cattle production/operations in this state. Public and private comments on the issue and how to address public concerns.”

Respondent 3—“Quality of care provided, quantity of facilities, mandatory clinical inspection and required continuing education.”

Respondent 6—“Licensed vs. non-licensed technicians and their assorted duties that they are allowed (or not allowed) to perform.”

Respondent 8—“O.T.C. [over the counter] sales of ‘veterinary’ products, e.g. mail order/online purchasing by the public of items which should be only with client-veterinarian relationship. Also, alternative medial therapies which haven’t been proven safe or effective shouldn’t be approved or encouraged, i. e. quack medicine.”

Respondent 13—“Well, I have just surfaced from a position as a veterinarian at Auburn University, where university politics overshadowed all other issues facing Alabama veterinarians. I suppose one rather hot topic is the internet access for flea and heartworm prevention products. I understand that the ASBVME [Alabama State Board of Veterinary Medical Examiners] has pursued the company in question on several instances and continues to work for veterinarians on this front. Personally, in trying to start a new practice, I have found the board, especially *****, and, the site inspector, *****, to be extremely helpful!”

Respondent 14—“Internet Pharmacies – providing sufficient response to client complaints and interpreting the law in regards to client requests. Lay person and other professions providing veterinary services – example – equine dentists, chiropractors, massage therapy.”

Respondent 15—“The potential change of the rabies vaccination status of Alabama from a one year to a three year vaccination program. The Alabama Veterinary Medical Association has assigned a task force to research this topic. This may eventually require a change in the practice act if deemed appropriate. If not the practice act, then a change in the state law requirements for vaccination against rabies.”

Respondent 17—“Education on bioterrorism (not enough)”

Respondent 20—"I feel like the board does a good job in regulating us. Sometimes their picky rules and fees seem unreasonable (i.e. premise permits, etc.). They are all big followers of the Alabama AVMA and sometimes make you feel like you need to join all their organizations."

Respondent 21—"The sale of veterinary prescription drugs by pet supply stores and over the internet. The sale of over the counter vaccines and working medication by feed and seed stores, discount department stores and pet supply stores. The Board has no jurisdiction to address these issues."

Respondent 25—"Sufficient numbers of veterinarians to deliver the services expected by the public vs. sufficient income to practicing veterinarians to encourage bright young individuals to train for our profession. This is not something the board can or should address."

Respondent 27—"Litigation and the changing status of animals – companions vs. property."

Respondent 28—"The amount of educational debt incurred while in school continues to rise and at a faster ratio than the monetary compensation rewarded to new graduates."

Respondent 31—"People who think veterinarians should give them prescription drugs simply at their requesting them. The board has done little about this."

Respondent 32—"I'm not aware of significant problems which the board could solve."

Respondent 33—"Not sure. I personally have not been aware of what our board is doing except when my license is due."

Respondent 35—"We are continually held to higher and higher standards of care by our liability and the court of public opinion. Standards are no longer determined regionally but nationally. In order to meet those standards, increasingly expensive equipment is necessary requiring higher fees. Some of our colleagues refuse to adhere to these standards allowing considerably lower fee structure. Owners are generally unaware of the difference in quality of care and complain about the higher prices."

Respondent 36—"Grade inflation and the subsequent graduation of educated incompetents. Includes lack of common sense in a large percentage of graduates because veterinary schools are primarily interested in numbers and keeping their classes full rather than graduating veterinarians who can deal with real life."

Respondent 38—"Corporate ownership of individual vet practices (such as Petsmart). The increase in tort awards relative to malpractice claims. It is unknown to me what the board can do about this."

Respondent 39—"The impact of internet pharmacies, media and newspaper magazine advertising that is in my opinion falsely leading the public. The board seems to be implementing an awareness campaign, at least via newsletter."

Respondent 40—"Controlling internet sales of veterinarian products."

Respondent 41—"Newsletters keep us up to date with changing requirements of the profession. Enforce practice act. Help keep the level of care provided by the veterinary profession (illegible) in stopping illegal (illegible) internet pharmacies. Working with the pharmacy board to stop illegal prescriptions."

Respondent 45—"Reciprocal licensure between states. Need to go to renewal every 2-3 years instead of annually. Ineffective in handling persons practicing without a license. Practice act is unconstitutional (prohibits new grads from setting up practice within reasonable financial limitations). I'm not aware that they are addressing any of this."

Respondent 46—"Homeland security and the war on terrorism. Board is keeping DVMs/VMDs updated with appropriate continuing education and news releases.

Respondent 48—"Annual rabies vaccination. Yes, addressing adequately. Faculty licensure for faculty at Auburn University and Tuskegee. Unsure."

Respondent 49—"Too much competition between veterinarians and not enough cooperation especially in the small animal practice."

Respondent 50—"Sale of practices by older veterinarians. Lack of graduates interested in owning. I believe the selection process for entry into our veterinary schools should be changed."

Question #9

Do you think the Board and its staff are satisfactorily performing their duties?

47 Yes 0 No 2 Unknown 2 No Opinion

Respondent 45—"Except they are not making any effort toward improvement, just maintaining the status quo."

Question #10

Has any member of the Board or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Board service for you?

1 Yes 48 No 1 Unknown 1 No Opinion

Respondent 31—"The last person who inspected solicited me to send ECGs to a friend of his. I felt this was very unprofessional—poor, poor, poor. This coming from the person governing my ethics. What a joke!"

Additional Comments

Respondent 8—“In general you’re doing O.K. All states should have reciprocity. Its getting harder and harder for the average small animal practice to compete. Obviously, we must adapt and change. Help suppress questionable alternative ‘medical practices’ and money grabbing mail order businesses.”

Respondent 12—“Recommend CE [continuing education] be increased to 20 hours over a 2 year period.”

Respondent 46—“The Alabama State Veterinary Medical Board and staff are to be commended for their excellent performance of duties and services.”

Licensed Veterinary Technician Questionnaire

Questionnaires were mailed to one hundred licensees. Thirty-nine responded.

Question #1

Do you think regulation of your profession by the Alabama Board of Veterinary Medical Examiners is necessary to protect public welfare?

37 Yes 0 No 2 Unknown 0 No Opinion

Question #2

Do you think any of the board's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

2 Yes 34 No 2 Unknown 1 No Opinion

Question #3

Do you think any of the Board's requirements are irrelevant to the competent practice of your profession?

6 Yes 30 No 2 Unknown 1 No Opinion

Question #4

Are you adequately informed by the Board of changes to and interpretations of Board positions, policies, rules and laws?

29 Yes 7 No 3 Unknown 0 No Opinion

Question #5

Has the Board performed the following in a timely manner?

Licensing 37 Yes 0 No 2 No Opinion

Renewal 37 Yes 1 No 1 No Opinion

Question #6

Do you consider mandatory continuing education necessary for competent practice?

37 Yes

2 No

0 Unknown

0 No Opinion

Question #7

Has the Board approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

33 Yes

5 No

1 Unknown

0 No Opinion

Respondent 19—"I think there could definitely be more CE courses offered to vet techs and to make them more accessible."

Respondent 28—"More providers need to offer more CEs at various times. Not just weekends."

Question #8

What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Board doing to address the issue(s)?

Respondent 1—"Burnout and underpaid. I'm not sure it is a board issue."

Respondent 2—"Public awareness of my profession has always been low, especially in more rural areas. Assistants are called techs, confusing the public to LVT. I have no knowledge of the Board addressing this issue."

Respondent 3—"I would like to take this opportunity to express to you the concerns that I have about the veterinary technician field. The questionnaire that you have sent out addresses the Alabama State Board of Veterinary Medical Examiners governing of veterinary technicians. I believe that a conflict of interest exists when veterinarians govern technicians.

The veterinary practice act clearly states that veterinarians are not allowed unlicensed workers to perform any task that would be considered the practice of veterinary medicine on patients without 'immediate' supervision of the veterinarian. Licensed veterinary technicians have the right go perform certain tasks while under 'direct' and 'indirect' supervision of the veterinarian yet this same right is routinely placed in the hands of unlicensed assistants.

The state board does little to encourage veterinarians to employ licensed technicians over hiring and training unlicensed assistants. While [a recent issue of the Board's newsletter] is a start in addressing an immense problem, I think the state board should be doing much more to enforce its regulations.

Licensed Veterinary Technician Questionnaire

I also think that the number of hours of continuing education and the cost of license renewal is disproportional when comparing veterinary salary to technician salary.

“I think you will find that many licensed technicians only hold their license for a few years then move on to other fields of employment because the salary and lack of medical and retirement benefits offered in the veterinary community is unacceptable in today’s workforce. I do not see this changing with the State Board of Veterinary Medical Examiners governing technicians.

“I have been a member of the American Association for Laboratory Animal Science for the past two years; this organization governs the licensing of laboratory animal technologists on a national level. They are light years ahead of the veterinary technician world in coordinating continuing education and licensing. I would like to see this type of organization governing veterinary technicians.”

Respondent 5—“People practicing without a license.”

Respondent 7—“The use of unlicensed ‘technicians’ to perform tasks that can only be legally performed by a licensed technician. This happens hundreds of times daily in Alabama and each time a misdemeanor is committed by the veterinarian assistant and the veterinarian. Also, in my place of employment (Auburn University Small Animal Clinic), unlicensed technicians were listed on the Annual Conference brochure as LVT’s thereby impersonating legally licensed LVTs. The Board has consistently failed to support my profession by turning a blind eye to this type of incidents and failing to prosecute where indicated.”

Respondent 12—“LVT’s leaving the profession due to low pay, low benefits and excessive hours. The number of veterinarians using unlicensed people to do LVT jobs is enormous in my opinion. I’m sure the board is enforcing the rules already in place. There needs to be strict regulation as to what unlicensed workers can perform in the vet practices.”

Respondent 13—“Ethical way of euthanasia and disposal. Good way to track controlled substances.”

Respondent 14—“Unlicensed technicians being paid equal salaries to schooled, licensed technicians. Veterinarians hiring unschooled personnel to do licensed tech jobs. Licensed techs being paid lower wages than necessary.”

Respondent 16—“Promoting competitive pay scale state-wide for LVTs. I honestly don’t know what they are doing. But there’s a \$4/hr difference between where I live and work. I drive over 1 hour for \$12/ hr.”

Respondent 17—“Allowing lay personnel to perform LVT duties”

Respondent 18—“Not high enough pay! Why would any vet want to hire an LVT if he or she can get Jane Doe to work for a lot less? We need the vets of Alabama to know how and why they should use us instead of some veterinarian assistant.”

Respondent 19—“Very low pay. I don’t now if the board is addressing this issue.”

Licensed Veterinary Technician Questionnaire

Respondent 20—“Unlicensed personnel being viewed as veterinary technicians. This seems to lessen the importance of LVTs. We need to have stricter regulations of unlicensed personnel or at least better awareness of the laws pertaining to them and LVTs.”

Respondent 21—“Working with ‘technicians’ who did not attend any schooling. I do believe the board is working on that and already has rules and regulations about that. Vets not wanting to pay licensed technicians what they are worth.”

Respondent 22—“I feel the most significant issue is proper inspection/enforcement of regulations in rural clinics. I do not know what the Board is doing to address this problem.”

Respondent 23—“Allowing people to work as veterinary technicians without a license. I’m not sure the Board is doing anything to address this.”

Respondent 24—“Allowing people without a license to work in a vet practice. It should be mandatory.”

Respondent 25—“Currently there is no provision for LVTs to have an option of inactive status to renew their license. If a vet wants to take a few years off to have and rear kids the only need to keep up continuing education hours. LVTs do not have that option. Since most of us are female, I feel this is a significant issue and should be addressed as soon as possible.”

Respondent 28—“The lack of pay for LVT and the ability of non-licensed personnel to call themselves veterinary technicians. I have also found outside of the realm of vet med no one knows about LVT, most people believe we are just ‘street trained’. When told I went to school for 2 years and had to pass a state board exam, they look at things differently. I haven’t really seen a big movement for any of these issues.”

Respondent 29—“Vets still hiring people off the street and training them, then calling them vet techs.”

Respondent 30—“Lack of knowledge about licensed technicians vs. unlicensed assistants. Lack of compliance with the practice act regarding licensed and unlicensed people.”

Respondent 32—“I feel that the profession as a whole should be governed more closely. There are more unlicensed technicians working than there are licensed technicians. This gives people with very limited knowledge the ability to do tasks, work with drugs, and do things that they should not be doing. I cannot legally call myself a nurse, so why should they be able to call themselves LVTs?”

Respondent 33—“I live and work in D.C.”

Respondent 34—“As a LVT, there is no respect by others. The pay is horrible. The CE is unfair because some of us are single family with no extra income or support to attend.”

Licensed Veterinary Technician Questionnaire

Respondent 35—"Under payment! I'm not sure exactly what the Board is doing but from what I hear they are trying."

Respondent 37—"Why can't an LVT such as myself of 20 years get CE hours in a vet seminar? I'm as competent as any DVM!! The Board needs to make this available to us."

Respondent 39—"I would like to see Alabama require practitioners to employ LVTs and utilize them as intended, not as glorified dog holders. I would like to see an increase in required CE hours and greater professionalism in our careers."

Question #9

Do you think the Board and its staff are satisfactorily performing their duties?

34 Yes 0 No 5 Unknown 0 No Opinion

Respondent 25—"I don not think that they are satisfactorily regulating (by on site inspection) the use of non-licensed staff performing licensed staff duties."

Question #10

Has any member of the Board or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Board service for you?

1 Yes 38 No 0 Unknown 0 No Opinion

Complainant Questionnaire

Questionnaires were mailed to seventy-nine complainants. Thirty-four responded.

Question #1

Was your complaint filed with the Board of Veterinary Medical Examiners by:

27 Mail 10 Phone 3 Fax 1 Other 1 Unknown

Some respondents made more than one selection

Question #2

Was receipt of your complaint promptly acknowledged?

27 Yes 6 No 1 Unknown

If yes, approximately how long after you filed your complaint were you contacted by the Board?

2 Immediately 7 Within 10 days 1 Within 20 days

11 Within 30 days 2 More than 30 days 2 Unknown

2 Did not respond

Respondent 2—"A letter [more] than four months later."

Respondent 13—"I was never contacted by the Board to discuss the issue. I just received a letter with their decision."

Respondent 25—"A letter"

Question #3

Was the employee who responded to your complaint knowledgeable and courteous?

11 Knowledgeable 14 Courteous 7 Neither 9 Unknown

Some respondents made more than one selection.

Respondent 15—"Written reply"

Respondent 23—"Response with a call on 12/3/02"

Respondent 24—"Told me I needed to go to another veterinarian."

Question #4

Did the Board communicate the results of investigating your complaint to you?

23 Yes

9 No

1 Unknown

1 No Response

Respondent 2—"In a letter."

Respondent 27—"Only that it was confidential—the agreement between the vet and the Board."

Question #5

Do you think the Board did everything it could to resolve your complaint?

5 Yes

20 No

9 Unknown

Question #6

Were you satisfied with your dealings with the Board?

5 Yes

27 No

2 Unknown

Respondent 27—"Because I do not know the results or punishment or fines, if any."

Respondent 28—"They ruled that they could not find any evidence of wrongful actions."

Additional Comments

Respondent 3—"I was disappointed that the final letter that I received informed me that the Board took disciplinary action which in part contains a measure of private discipline. This doesn't tell me what action was taken. So, was his hands smacked or was he charged a fine or just told don't do it again? I called the office and asked and I was told it is confidential."

Respondent 4—“My perception of this entire experience with ***** is he is protecting his cash flow, rather than indicating any concern for the well being of my dog.

Hardly six (6) months had elapsed since he examined the dog. Another six (6) months of medicine would have covered her for a full year. Why another exam at (6) six months would have been necessary is a mystery.

It is not surprising veterinarians support veterinarians.”

Respondent 5—summation of detailed documentation:

- March 7, 2002 the respondent took her dog to a groomer located in a building with a veterinarian. While on the premises, the dog was attacked and killed by another unsecured dog.
- The Board received the respondent’s complaint against the veterinarian and acknowledged it on August 18, 2002. The complaint was assigned to a board member and an investigation was made.
- As a result of the investigation, the Board entered into a consent agreement with the veterinarian, in lieu of a formal hearing. The final order was issued on December 10, 2002.
- The Board sent a letter to the respondent outlining the result of the investigation on January 6, 2003. The letter states, “The agreement and order is an acceptance by ***** of disciplinary action from the Board. The consent agreement, which, in part, contains a measure of private discipline, prohibits us from disclosing the details of the agreement and order.”
- In a reply to the Board dated January 21, 2003, the respondent expressed her incredulity and distress at not being told the actual result of the Board’s investigation (“Now I am being informed that the actions taken by the Board, if any, are none of my business.”, and “I understand that the Board may be inclined to look out for “one of their own”. The use of the wording “measure of private discipline” in your letter is vague and ambiguous. It is distressing to me that my family is not entitled to information regarding the outcome of the investigation and any accountability determined in Lassie’s death.”)
- The respondent states that “the [Board] did nothing to specifically address my concerns” and that she will “not give up ensuring accountability is achieved in this matter.”

Respondent 6—“I feel like their decision was already made and there was not anything I could do that would give me a fair settlement. I was very wrongly and unethically treated by *****, who was responsible for ours and Rusty’s suffering and after 11 months of everything I tried to do for Rusty was of no avail and we had to make the heart wrenching decision to have Rusty put to sleep.”

Respondent 11—“I didn’t appreciate the way I was treated. My case/complaint was dismissed with no consideration of any sort.”

Respondent 13—“It was a whitewash with no investigation done.”

Complainant Questionnaire

Respondent 14—“***** was assigned to investigate my complaint. When she called me to conduct the initial interview, she warned me of making an unfounded complaint and was biased and intimidating in her questioning. At one point I told her that she sounded more like a lawyer than an investigator. I do not feel that having veterinarians investigating complaints against fellow veterinarians is the impartial way to conduct these investigations.

She told me what she would need to do to further her investigation and she did not do it. I received a letter in the mail a few weeks later stating that there was no ‘evidence’ to support my claim(s). Had she done what she stated she was going to do, she would have had the evidence.

In conclusion, the friendship and fellowship among the veterinarians will not allow for productive, impartial investigations, or at least it didn’t in my case.”

Respondent 23—“I file complaint in September 2002. My dog was kill August 2002. Letter response May 2003 from the Board stating there may be suspicion of wrongdoing but no proof.”

Respondent 24—“There was a misunderstanding between Pet Meds and the veterinarian authorizing heart worm medication. Pet Meds sent me the form and encouraged me to file a complaint. The veterinarian’s *****, told us to go somewhere else when she received the form from the Examiner. Her secretary was very rude.”

Respondent 27—“Would like to know if my complaint made a difference. Hope it will save other cats’ lives.”

APPENDICES

Statutory Authority

ARTICLE 4. VETERINARY PRACTICE.

REFERENCES

RESEARCH REFERENCES

Am Jur Pleading and Practice Forms:

24B Am. Jur. Pl. & Pr. Forms, Veterinarians, § 1 et seq.

§ 34-29-60. Short title. [AL ST SEC 34-29-60]

Current through End of 2003 Organizational Session

This article shall be known as the Alabama Veterinary Practice Act.
(Acts 1986, No. 86-500, p. 956, § 1.)

§ 34-29-61. Definitions. [AL ST SEC 34-29-61]

Current through End of 2003 Organizational Session

Historical Notes

For the purposes of this article, the following terms shall have the following meanings ascribed by this section:

- (1) Accredited school of veterinary medicine. Any veterinary college or division of a university or college that offers the degree of doctor of veterinary medicine or its equivalent and is accredited by the American Veterinary Medical Association (AVMA).
- (2) Animal. Any animal or mammal other than man, including birds, fish, reptiles, wild or domestic, living or dead.
- (3) Applicant. A person who files an application to be licensed to practice veterinary medicine or licensed as a veterinary technician.
- (4) Board. Alabama State Board of Veterinary Medical Examiners.
- (5) Consulting veterinarian. A veterinarian licensed in another state who gives advice or demonstrates techniques to a licensed Alabama veterinarian or group of licensed Alabama veterinarians. A consulting veterinarian shall not utilize this privilege to circumvent the law.
- (6) Direct supervision. The veterinarian is on the premises and is quickly and easily available and the animal has been initially examined by a veterinarian and examined by a veterinarian at such other times as acceptable veterinary medical practice requires, consistent with the particular delegated animal health care task.
- (7) Emergency. The animal has been placed in a life threatening condition and

immediate treatment is necessary to sustain life.

(8) Foreign veterinary graduate, excluding Canada. Any person, including a foreign national or an American citizen, who has received a professional veterinarian medical degree from an American Veterinary Medical Association listed veterinary college that is not accredited by the American Veterinary Medical Association.

(9) Immediate supervision. The veterinarian is in audible and visual range of the animal patient and the person treating the patient.

(10) Indirect supervision. The veterinarian is not on the premises, but has given either written or oral instructions for the treatment of the animal patient and the animal has been initially examined by a veterinarian.

(11) License. Any permit, approval, registration, or certificate of qualification issued by the board.

(12) Licensed veterinarian. A person who is validly and currently licensed to practice veterinary medicine in Alabama.

(13) Person. Any individual, firm, partnership, association, joint venture, cooperative, or corporation or any other group or combination acting in concert; and whether or not acting as a principal, trustee, fiduciary, receiver, or as any kind of legal or personal representative, or as the successor in interest, assigning agent, factor, servant, employee, director, officer, or any other representative of such person.

(14) Practice of veterinary medicine:

a. To diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental condition; including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthesia, or other therapeutic or diagnostic substance or technique on any animal including but not limited to acupuncture, dentistry, animal psychology, animal chiropractic, theriogenology, surgery, including cosmetic surgery, any manual, mechanical, biological, or chemical procedure for testing for pregnancy or for correcting sterility or infertility, or to render service or recommendations with regard to any of the above.

b. To represent directly or indirectly, publicly or privately, an ability and willingness to do any act described in paragraph a.

c. To use any title, words, abbreviations, or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in paragraph a. Such use shall be prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine.

d. Collects blood or other samples for the purpose of diagnosing disease or other conditions. This paragraph shall not apply to unlicensed personnel employed by the United States Department of Agriculture or the Alabama Department of Agriculture who are engaged in the Brucellosis eradication program or external parasite control program pursuant to Section 2-15-192.

e. To remove any embryo from a food animal or companion animal for the purpose of transplanting the embryo into another female animal or for the purpose of cryopreserving the embryo, or to implant the embryo into a food or companion animal. It shall not be considered the practice of veterinary medicine for a person or his or her full-time employees to remove an embryo from the food or companion animal of the person for the purpose of transplanting or

cryopreserving the embryo, or to implant an embryo into the food or companion animal of the person, provided ownership of the food or companion animal shall not be transferred or employment of the person shall not be changed for the purpose of circumventing this article.

(15) Temporary license. Temporary permission to practice veterinary medicine issued by the board pursuant to this article.

(16) Unregistered assistant. Any individual who is not a veterinary technician or veterinarian and is employed by a licensed veterinarian.

(17) Veterinarian, Doctor of Veterinary Medicine, DVM, VMD, or equivalent title. A person who has received a doctor's degree in veterinary medicine from an accredited school of veterinary medicine or holds an educational commission for foreign veterinary graduates (ECFVG) certificate issued by the American Veterinary Medical Association (AVMA).

(18) Veterinary facilities. Any place or unit from which the practice of veterinary medicine is conducted. The following are types of veterinary facilities:

a. *Veterinary or Animal Hospital or Clinic.* Meets or exceeds all mandatory requirements as listed in the administrative code of the board for veterinary facilities. In doing so, it provides quality examination, diagnostic and health maintenance services for medical and surgical treatment of animals and is equipped to provide housing and nursing care for the animals during illness or convalescence.

b. *Specialty Practice or Clinic.* Provides complete specialty service by a Veterinarian who has advanced training in that specialty and is a diplomat of an approved specialty college. It meets all minimum standards that are applicable to that specialty.

c. *Central Hospital.* Shall meet all requirements of paragraph a, as well as provide specialized care including 24-hour nursing care and specialty consultation on a permanent or on-call basis. It is mainly utilized on referral from area veterinary hospitals or clinics.

d. *Satellite, Outpatient, or Mobile Small Animal Clinics.* A supportive facility owned by or associated with, or both, and has ready access to, within a reasonable distance, a full-service veterinary hospital or clinic or a central hospital providing all mandatory services and meeting all minimum standards. The public shall be informed of the limitation of services by way of a posted notice in plain view and easily readable or by notice provided to the client by flyer or card which clearly specifies those mandatory veterinary medical services which are not provided. In addition, the main location and telephone number of the veterinary hospital or clinic providing the required service, as well as the signed agreement with the veterinary hospital or clinic shall also be posted in plain view and be easily readable. A veterinarian associated with this veterinary hospital or clinic shall be on call during and after operation of the satellite, outpatient, or mobile clinic to render aid if necessary. The personnel of satellite, outpatient, or mobile clinics shall consist of one or more veterinarians and auxiliary personnel necessary to provide adequate outpatient service. Operation of any satellite, outpatient, or mobile clinic shall be under the direct supervision of a licensed veterinarian who remains on the premises during the entire time of operation.

e. *Large Animal Mobile Clinic.* Must provide examination, diagnostic and preventive medicine, and minor surgical services for large animals not requiring confinement or hospitalization. Emergency service and radiology service shall be provided by that veterinarian or by written agreement with another veterinarian or group of veterinarians in practice in that locale. These clinics shall provide a degree of veterinary care compatible with the level of standards considered adequate to the practice of veterinary medicine currently available in the area. Complete hospital facilities may be provided by the nearest large animal hospital or veterinary school.

f. *Emergency Clinic.* A facility established to receive patients and to treat illnesses and injuries of an emergency nature requiring treatment. The clinic shall provide professional diagnostic and emergency treatment during hours when local veterinary hospitals are normally closed. Emergency clinics shall meet all mandatory requirements of a veterinary hospital or clinic.

(19) *Veterinary medicine.* Includes veterinary surgery, theriogenology, dentistry, acupuncture, animal psychology, chiropractic, and all other branches or specialties of veterinary practice.

(20) *Veterinary intern.* A person who is working towards completion of an ECFVG certificate and who is working under the direct or indirect supervision of a board approved licensed veterinarian in any state to complete the practical experience internship required for licensing in Alabama.

(21) *Veterinary student preceptee.* A person who is pursuing a veterinary degree in an accredited school of veterinary medicine which has a preceptor or extern program and who has completed the academic requirements of the program.

(22) *Veterinary technician, licensed veterinary assistant, veterinary technologist, animal technologist, animal technician.* Persons other than a veterinarian who have successfully completed a post-high school course in the care and treatment of animals which is accredited by the AVMA Committee on Activities and Training (CATAT) or is approved by the Alabama board and is licensed in this state to perform acts which require limited skill, responsibility, and minimal exercise of independent judgement in the treatment of patients of veterinarians and under direct, indirect, or immediate supervision of a veterinarian as herein and hereafter provided.

(Acts 1986, No. 86-500, p. 956, § 2; Acts 1987, No. 87-794, p. 1557, § 2; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, in the introductory matter substituted "following" for "respective", in subdivision (2) substituted "man, including" for "man and includes", in subdivision (5) substituted "shall not" for "can in no way", in subdivision (6) inserted "initially" and substituted "and examined by a veterinarian at such other" for "at such", in subdivision (8) substituted ", excluding Canada" for "(excludes Canada)", in subdivision (10) inserted "initially" and deleted "at such times as acceptable veterinarian medical practice requires, consistent with the particular delegated health care task, and the animal is not anesthetized" following "a veterinarian", in

subdivision (14), in paragraph a substituted "chiropractic" for "chiropracty", in paragraph b deleted "above" following "paragraph a", in paragraph d inserted "paragraph" and substituted "pursuant to" for "as per" and in paragraph e substituted "the" for "such" in five places, substituted "animal. It" for "animal, provided, however, it", inserted "or her", substituted "the food or companion animal of the person" for "such person's own food or companion animal" in two places and substituted "article" for "law", in subdivision (15) substituted "Temporary" for "Any temporary", in subdivision (16) substituted "a veterinary" for "an animal", in subdivision (17) substituted "for" for "on", in subdivision (18) substituted "shall" for "must" in seven places, in paragraph a substituted "administrative code of the board" for "board bylaws" and substituted "the animals" for "them", in paragraph b substituted "Provides" for "Must provide" and substituted "meets" for "must meet", in paragraph c substituted "paragraph a" for "a above", in paragraph d substituted "or associated with, or both," for "and/or associated with" in the first sentence, substituted "shall" for "will" and inserted "the" preceding "client" in the second sentence and deleted the fifth sentence, in paragraph e inserted "radiology service" and in paragraph f substituted "The clinic" for "They", in subdivision (19) substituted "chiropractic," for "chiropracty", in subdivision (20) deleted "who has received his DVM or equivalent degree from an accredited veterinary college or" following "A person" and deleted "six-month" preceding "practical", in subdivision (21) substituted "the" for "such" following "requirements of", and in subdivision (22) substituted "herein and hereafter" for "here and after"; and made nonsubstantive changes.

§ 34-29-62. Legislative intent. [AL ST SEC 34-29-62]

Current through End of 2003 Organizational Session

In order to promote the public health, safety and welfare by safeguarding the people of the State of Alabama against unqualified or incompetent practice of veterinary medicine, it is hereby declared that the right to practice veterinary medicine is a privilege conferred by legislative grant to persons possessed of the personal and professional qualifications specified in this article. It is the legislative intent that veterinarians who are not normally competent or who otherwise present a danger to the public shall be disciplined or prohibited from practicing in the State of Alabama.
(Acts 1986, No. 86-500, p. 956, § 3.)

§ 34-29-63. State Board of Veterinary Medical Examiners established; membership generally. [AL ST SEC 34-29-63]

Current through End of 2003 Organizational Session

Historical Notes References

- (a) There is established a state board to consist of eight members to be known as the Alabama State Board of Veterinary Medical Examiners.
- (b) Each of the eight members of the board shall be appointed by the Governor from a list of three persons nominated and submitted to him or her by the Alabama Veterinary Medical Association at least 30 days prior to appointment.

(c) The term of each member of the board shall be four years unless removed or until a successor is appointed and qualified. Vacancies shall be filled by appointment by the Governor as provided in subsection (b).

(d) No person may serve as a member of the board for more than 13 years total.

(e) Members shall not serve more than two consecutive terms of office.

(Acts 1986, No. 86-500, p. 956, § 4; Acts 1987, No. 87-794, p. 1557, § 3; Acts 1989, No. 89-236, p. 310, § 3, Acts 1997, No. 97-249, p. 431, § 1; Act 2001-249, p. 299, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, in subsection (a) deleted "and" following "members"; in subsection (b) inserted "or her"; in subsection (c) substituted "four" for "five", substituted "appointment by the Governor" for "the Governor's appointment", and deleted "of this section; except that on and after April 6, 1989, all successor members shall serve terms of office of four years each" following "subsection (b)"; deleted subsection (d); and redesignated subsections (e) and (f) as subsections (d) and (e), respectively.

The 2001 amendment, effective April 19, 2001, in subsections (a) and (b) substituted "eight" for "five".

Code Commissioner's Notes

Section 2 of Acts 1989, No. 89-236 provides: "The existence and functioning of the Board of Veterinary Medical Examiners, created and functioning pursuant to sections 34-29-60 through 34-29-94, Code of Alabama 1975, is hereby continued, and said code sections are hereby expressly preserved."

Acts 1993, No. 93-155 § 2 provides: "The existence and functioning of the Alabama State Board of Veterinary Medical Examiners, created and functioning pursuant to Sections 34-29-60 to 34-29-94, inclusive, is continued, and those code sections are expressly preserved."


Acts 1997, 97-168, § 2, provides: "The existence and functioning of the Alabama State Board of Veterinary Medical Examiners, created and functioning pursuant to Sections 34-29-60 to 34-29-94, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2001-249, § 2 provides: "The existence and functioning of the Alabama State Board of Veterinary Medical Examiners, created and functioning pursuant to Sections 34-29-60 to 34-29-111, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons 5(1); States 45.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18; States §§ 79-80, 82, 136.

§ 34-29-64. Qualifications of members; removal. [AL ST SEC 34-29-64]

Current through End of 2003 Organizational Session

Historical Notes References

(a)(1) Six members of the board shall be graduates of an accredited school of veterinary medicine; legal residents of Alabama; currently and validly licensed to practice veterinary medicine in Alabama; actively employed and licensed in the practice of veterinary medicine in the State of Alabama for the five years immediately prior to appointment; and continuing at least 35 hours per week in the practice of veterinary medicine while serving on the board.

(2) One member of the board shall be a licensed veterinary technician.

(3) One member of the board shall be a consumer.

(b) No person who has been appointed to the board shall continue membership on the board if, during the term of his or her appointment, he or she shall have done any of the following:

(1) Transfer his or her legal residence to another state.

(2) Own or be employed by any wholesale or jobbing house dealing in supplies, equipment, or instruments used or useful in the practice of veterinary medicine.

(3) Have his or her license to practice veterinary medicine as a veterinarian or as a licensed veterinary technician rescinded.

(4) Miss three consecutive meetings of the board.

(5) Be guilty of misconduct or gross inefficiency.

(c) The board shall establish procedures for the removal of members who violate one or more of the provisions of subsection (b).

(Acts 1986, No. 86-500, p. 956, § 5; Acts 1987, No. 87-794, p. 1557, § 4; Acts 1997, No. 97-249, p. 431, § 1; Act 2001-249, p. 299, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, in subsection (a) substituted a semicolon for "and" following "resident of Alabama", and substituted "appointment; and" for "his appointment;"; in subsection (b) inserted "or her" in three places, in the introductory matter deleted "his" following "continue" and substituted "or she shall have done any of the following" for "shall", and in subdivisions (1)-(4) substituted a concluding period for ", or"; and in subsection (c) deleted "of this section" following "subsection (b)".

The 2001 amendment, effective April 19, 2001, in subsection (a) inserted the subdivision (1) designator, substituted "Six members" for "Each member", substituted "graduates" for "a graduate", substituted "legal residents" for "a legal resident", and added subdivisions (2) and (3); and in subdivision (b)(3) inserted "as a veterinarian or as a licensed veterinary technician".

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-29-65. Executive director; incapacitation of director; official bond. [AL ST SEC 34-29-65]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

(a) The board may employ an executive director, prescribe the duties, and set the salary of the executive director.

(b) In the event the director should become incapacitated or unable to perform the duties of the position, the board may employ a person or persons to assume the duties of the director for as long as the board deems necessary.

(c) The director shall make and file with the Secretary of State an official bond in an amount to be fixed by the board. Premiums of the bond shall be paid out of funds of the board. The bond shall be payable to the State of Alabama and shall be written by an approved bonding company licensed to do business in the State of Alabama.

(Acts 1986, No. 86-500, p. 956, § 6; Acts 1987, No. 87-794, p. 1557, § 6; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, inserted the subsection (a) designator, substituted "may" for "shall have the authority to", substituted "director" for "secretary", substituted "the" for "said person's" in two places, and substituted "of the executive director" for "at a sum not to exceed \$30,000.00 per year"; and added subsections (b) and (c).

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-29-66. President and vice-president; bylaws; meetings; quorum; records. [AL ST SEC 34-29-66]

Current through End of 2003 Organizational Session

- (a) The board shall elect from its members a president and vice-president, each of whom shall serve a term of one year.
 - (b) The board shall do all of the following:
 - (1) Adopt rules and regulations to be compiled as an administrative code.
 - (2) Name a definite time and place for meetings.
 - (3) Have at least two business meetings each year called by the president, which shall be in addition to meetings for the conduct of examinations.
 - (4) Give notice in writing at least 10 days prior to the date on which the two annual business meetings are held to Alabama licensed veterinarians.
 - (5) Have a majority of sitting members of the board as a quorum.
 - (6) Hold meetings and administrative hearings open to the public except where closed to prepare, approve, administer, or grade examinations or to deliberate the qualifications of an applicant for licensing or the disposition of a proceeding to discipline a licensed veterinarian or any other person licensed under this article.
 - (7) Hold special meetings called by the president or vice-president of the board and meet anywhere in Alabama.
 - (8) Keep complete and accurate records of all meetings and these records, except the records of closed meetings as provided in subdivision (6), shall be open to the public.
- (Acts 1986, No. 86-500, p. 956, § 7; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, in subsection (a) substituted "elect from its members" for "from its members elect"; in subsection (b) inserted "do all of the following", in subdivision (1) substituted "rules and regulations to be compiled as an administrative code." for "bylaws;", in subdivision (5) substituted "sitting" for "three", in subdivision (6) inserted "and administrative hearings", inserted "the" following "deliberate" and inserted "an applicant for licensing or the disposition of", in subdivision (7) substituted a concluding period for "; and", and in subdivision (8) deleted "of this section" following "subdivision (6)" and deleted the second sentence; and made nonsubstantive changes.

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

The members of the board shall receive one hundred dollars (\$100) a day for each day or a portion thereof the member is actually engaged in the work of the board, and in addition, the usual per diem expenses allowed to other persons acting in the service of the State of Alabama or any of its agencies, institutions, boards, bureaus, or commissions. The legal expenses of the board for administration of this article shall be paid from funds in the State Treasury to the credit of the board and shall be paid only on warrant of the State Treasurer and approved by the Governor. No funds shall be withdrawn or expended except as budgeted and allotted pursuant to Title 41, Chapter 4, Article 4, and only in amounts as stipulated in the general appropriations act. (Acts 1986, No. 86-500, p. 956, § 8; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, substituted "one hundred dollars (\$100)" for "\$100.00", substituted "the" for "such a" following "portion thereof", inserted a comma following "bureaus", and substituted "pursuant to" for "according to the provisions of".

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-29-68. Records to be kept; issuances and denials of licenses; what records are confidential. [AL ST SEC 34-29-68]

The board shall keep records of its proceedings in a book provided for that purpose, especially with relation to the issuance, denial, renewal, suspension, and revocation of licenses to practice veterinary medicine. All licenses issued by the board shall be numbered and recorded by the executive director in a file for that purpose. Where a license is denied by the board to any applicant under this article, the facts and grounds of denial shall be entered in the minutes of the board. The issuance or denial of a license shall be noted along with the names of those board members present and the file shall be maintained by the board. Information received by the board through applications,

complaints, inspections, and investigations shall be confidential and shall not be disclosed, except in a proceeding involving the question of the issuance of a license or disciplinary proceedings against a licensee or if authorized by law, a non-licensee. The board shall also be responsible for keeping a list of its members and their current status of license, whether revoked, inactive, suspended, etc.
(Acts 1986, No. 86-500, p. 956, § 9; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, in the second sentence substituted "director" for "secretary" and substituted "purpose. Where" for "purpose; and where", in the present second sentence substituted "of" for "for such" following "grounds", in the present fourth sentence substituted "issuance or denial of a" for "time and issuance of denial of" and substituted "the file" for "such file or record shall be open to public inspection. These records", in the fifth sentence inserted "applications, complaints," and substituted "the issuance of a license or disciplinary proceedings against a licensee or if authorized by law, a non-licensee" for "license", and made nonsubstantive changes.

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-29-69. Powers of board. [AL ST SEC 34-29-69]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

The board shall be a body corporate and shall have the power to do all of the following:

- (1) Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in the state.
- (2) Issue, renew, deny, suspend, and revoke licenses, issue private reprimands and private informed admonitions to practitioners who practice veterinary medicine in this state, or otherwise discipline or censure licensed veterinarians consistent with this article.
- (3) Conduct investigations for the purpose of discovering violations of this article or grounds for disciplining licensed veterinarians pursuant to the administrative code of the board and appoint individuals and committees to assist in the investigations.
- (4) Have a common seal and act as a corporate body with the right to sue and be sued, hold hearings, subpoena witnesses, compel the production of any books,

records, papers, or documents, and take testimony bearing on the records of applicants for licensing to practice veterinary medicine and surgery in Alabama and on the records of practitioners who may be under consideration by the board for charges of misconduct.

(5) Employ full-time or part-time personnel, including an executive director as previously provided, professional, clerical, or special personnel as necessary to effectuate this article and to purchase or rent necessary office space, equipment, and supplies.

(6) Appoint from its own membership one or more members to act as representatives of the board at any meeting in or out of the state when representation is deemed desirable. A delegate from the board shall attend the annual meeting of the American Association of Veterinary Examiners and his or her expenses shall be paid by the board. The board may authorize the attendance of the executive director, legal counsel, or other staff members of the board at any meeting described in this subdivision.

(7) Adopt, amend, or repeal all rules necessary for its governance and all regulations necessary to carry into effect the provisions of this article in accordance with the Administrative Procedure Act, including, but not limited to, the establishment and publication of rules of professional conduct for the practice of veterinary medicine. These regulations shall be known as the Alabama State Board of Veterinary Medical Examiners Administrative Code. They shall be published and distributed to all licensed Alabama veterinarians and to all applicants for licensing. Any proposed changes to the administrative code shall be published in the official newsletter of the Alabama Veterinary Medical Association and mailed to all Alabama licensed veterinarians. A period of 10 days shall be allowed to post publication or notification so that any Alabama licensed veterinarian opposing the changes has time to request a hearing as hereafter provided.

(8) To fix minimum standards for continuing veterinary medical education which standards shall be a condition precedent to the renewal of a license under this article.

(9) To inspect any hospitals, clinics, satellites, outpatient clinics, mobile clinics, or other places utilized by any practicing veterinarian. An inspection shall be made by the board's authorized representative(s). The inspection shall be for the purpose of reporting such inspection to the board on a form prescribed by the board or for seeking disciplinary action in cases of violation or practice of unreasonable health or sanitary regulations duly established and published by the board or other duly constituted state authorities having jurisdiction in such matters.

Notwithstanding any other provision of law, if certain equipment or services required by rule or regulation of the board to be available at a premises are not available at a premises, a written and signed agreement may be provided to the board demonstrating that the arrangements have been made to provide the equipment or services at a location that is within a reasonable distance from the premises.

(10) To provide special registration for veterinarian technicians, and if desired, veterinary interns, and veterinary student preceptees and to adopt regulations concerning the training, legislation, and service limits of those assistants while employed by and acting under the supervision and responsibilities of licensed veterinarians. The board shall have exclusive jurisdiction in determining eligibility

and qualification requirements and in granting or refusing to grant or to suspend or revoke registration. Any suspension or revocation of a special registration issued under this section shall be conducted pursuant to the Code of Alabama 1975.

(11) Establish and publish annually a schedule of fees for the licensing or registration, or both, and for renewal of a license or registration for veterinarians and veterinary technicians pursuant to this article.

(12) Authorize any member of the board to sign complaints for the bringing of proceedings in courts for the enforcement of this article.

(13) To act as a corporate board or as an individual member of the board to prosecute in court on an action quo warranto, injunction, or any other proper suit to oust from practice unlawful practitioners and to assist the Attorney General or any other prosecutor for criminal violations of this article.

(14) For disciplinary purposes, to adopt, levy, and collect administrative fines for noncompliance by its licensees of this chapter, or the administrative code of the board, of not less than two hundred fifty dollars (\$250), nor more than one thousand dollars (\$1,000) per violation, and to institute any legal proceedings necessary to effect compliance with this chapter.

(15) To promulgate and implement administrative rules and regulations in accordance with the State Administrative Procedure Act to provide for an inactive license status, an inactive license fee, and a reactivation process and reactivation fee. (Acts 1986, No. 86-500, p. 956, § 10; Acts 1989, No. 89-236, p. 310, § 3; Acts 1993, No. 93-155, p. 250, § 3; Acts 1997, No. 97-168, p. 243, § 3; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1993 amendment, effective April 6, 1993, in subdivision (2) deleted "licenses and" preceding "temporary," inserted "and permanent," inserted "and to," substituted "of Veterinary Medicine" for "who practice Veterinary Medicine," and deleted "the provisions of" following "consistent with"; deleted "the provisions of" following "effectuate" in subdivision (5); in subdivision (6), in the first sentence substituted "in" for "within," substituted "out of" for "without," and deleted "such" preceding "representation," and in the second sentence, substituted "shall" for "is required to," and inserted "or her"; in subdivision (7), in the first sentence inserted "but not limited to," and inserted language beginning "and rules prohibiting fraudulent," substituted "shall" for "must" in the third and fourth sentences, and rewrote the last sentence; in subdivision (8) divided the former first sentence into the present first and second sentences, deleted "which" following "education" in the first sentence, and inserted "Compliance with these" in the second sentence; in subdivision (9), deleted "or" preceding "mobile clinics" in the first sentence, and substituted "An" for "Such" in the second sentence; in subdivision (10) divided the former first sentence into the present first, second, and third sentences, in the first sentence substituted "those persons" for "such persons," and deleted "and to" following "Licensed Veterinarians," in the second sentence inserted "the board shall," and deleted "providing that" following "registration," substituted "pursuant to the Code of Alabama 1975" for "under the provisions of the Alabama Code" in the last sentence; in

subdivision (11) substituted "the issuance and renewal of a license or registration" for "licensing and/or registration and for renewal of same," and deleted "and in accordance with the provisions of" following "pursuant to"; in subdivision (13) substituted "prosecutor" for "solicitor," and deleted "and" following "article"; and deleted "provisions of" following "licensees of" in subdivision (14).

The 1997 amendments. -- The 1997 amendment by Acts 1997, No. 97-168, § 3, in subdivision (4) inserted "compel the production of any books, records, papers, or documents," in subdivision (7) inserted "in accordance with the Administrative Procedure Act", added the undesignated subdivision preceding subdivision (10), in subdivision (14) substituted "two hundred fifty dollars (\$250)" for "\$250" and substituted "one thousand dollars (\$1,000)" for "\$1,000", and added subdivision (15). For effective date, see the Code Commissioner's note below.

The 1997 amendment by Acts 1997, No. 249, § 1, in the introductory matter inserted "do all of the following", in subdivision (2) substituted "licenses," for "temporary and permanent licenses, and to" and substituted "who practice" for "of", in subdivision (3) substituted "the administrative code of the board" for "board rules and bylaws", in subdivision (5) substituted "director" for "secretary", in subdivision (6) added the third sentence, in subdivision (7) substituted "governance" for "government", deleted "and rules prohibiting fraudulent or misleading advertisements or solicitations by licensees of the board to the general public" following "medicine", substituted "Medical Examiners Administrative Code" for "Medicine Rules and Bylaws", substituted "the administrative code" for "these rules and bylaws", substituted "and" for "or" following "Association" and rewrote the fifth sentence, in subdivision (8) substituted "which" for ". Compliance with these", in subdivision (10) substituted "veterinarian" for "animal", inserted a comma following "interns" and substituted "assistants" for "persons", in subdivision (11) substituted "licensing or registration, or both, and for" for "issuance and", and in subdivision (14) substituted "the administrative code" for "rules". For effective date, see the Code Commissioner's note below.

Code Commissioner's Notes

Section 34-29-69 was amended by Act 97-168, which became effective April 8, 1997, and Act 97-249, which became effective August 1, 1997. The two acts are not in substantive conflict and can be given effect and incorporated in the code section in a manner which will make the code section intelligible. Accordingly, the changes specified in both 1997 acts have been incorporated into the code section. The 1997 amendment notes specify the changes to the section prescribed by each act. The changes made pursuant to Act 97-168 are effective April 8, 1997, and the changes made pursuant to Act 97-249 are effective August 1, 1997.

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-29-70. Board of Veterinary Medical Examiners Fund; expenditures; transfer of excess. [AL ST SEC 34-29-70]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

All revenues received by the board shall be accepted by the executive director and deposited with the Treasurer of the State to be credited to an account to be known as the Board of Veterinary Medical Examiners Fund. All expenses of the board shall be paid from the fund by vouchers signed by the executive director of the board and no part of the state's General Fund shall be expended for this purpose. Funds shall be a continuing account and shall not be subject to diversion to the State General Fund except to the extent that the balance in the fund at the close of any fiscal year exceeds the budget of the board by 200 percent, in which case the excess shall be transferred to and become a part of the State General Fund.

(Acts 1986, No. 86-500, p. 956, § 11; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, substituted "director" for "secretary" in two places, deleted "by him" following "deposited", and substituted "medical examiners" for "medicine".

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-29-71. Temporary license; conditions; issuance; duration; limit on issuance. [AL ST SEC 34-29-71]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

(a) The board may issue a temporary license to practice veterinary medicine to an unlicensed applicant providing the applicant meets all conditions and requirements of this article relating to qualifications of applicants for license to practice veterinary medicine. Any person applying for a temporary license shall associate himself or herself with a licensed doctor of veterinary medicine. His or her license shall be limited to the work of a licensed doctor of veterinary medicine and he or she shall not participate without direct supervision in the practice of or operation of a branch office, clinic, or allied establishment. An applicant may work under the indirect supervision in the primary

clinic of his or her employer. The license, when granted, shall bear the name and address of the licensed doctor of veterinary medicine. There shall be a fee which shall not be refundable for the temporary license.

(b) Renewal of temporary licenses may be granted by the board. No temporary license shall be issued to an applicant who has previously failed either the National Board Examination for Veterinarians, Clinical Competency Test for Veterinarians, or any portion of the Alabama State Board Examination.

(c) All temporary licenses shall expire 90 days from date of issue or on the day the applicant receives or is denied a license from the board, whichever date is earliest.

(d) Acceptance of a temporary license by an applicant shall be deemed to be consent for expiration of that license in accordance with this article.

(e) If employment ceases at the place of employment noted on the temporary license, then the board shall be notified or if there is more than one employer of that temporary license holder, the board shall be notified by the employer.

(Acts 1986, No. 86-500, p. 956, § 12; Acts 1987, No. 87-794, p. 1557, § 5; Acts 1989, No. 89-236, p. 310, § 3; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, in subsection (a), in the first sentence deleted ", upon taking the State Examination," following "issue" and substituted "the" for "such" following "providing", in the second sentence inserted "or herself", in the third sentence inserted "or she", in the third and fourth sentences inserted "or her", and in the fourth sentence substituted "An" for "Such"; in subsection (b) rewrote the first sentence, and in the second sentence substituted "National Board Examination for Veterinarians, Clinical Competency Test for Veterinarians, or any portion of the Alabama State Board Examination" for "national or state section of the examination"; in subsection (c) inserted "90 days from date of issue or", and inserted ", whichever date is earliest"; in subsection (d) deleted "the provisions of" preceding "this article"; in subsection (e) substituted "shall" for "must" following "then the board", and substituted "the" for "said" following "notified by"; deleted subsection (f); and made nonsubstantive changes.

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒5(1, 4).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18, 26-27.

§ 34-29-72. Application for license; qualifications. [AL ST SEC 34-29-72]

Current through End of 2003 Organizational Session

(a) Any person desiring a license to practice veterinary medicine in this state shall make written application in the English language to the board. The application shall show that the applicant is at least 21 years old, is a graduate of an accredited veterinary school, and any other information and proof as the board may require pursuant to the administrative code of the board. The application shall be accompanied by application and examination fees in the amounts established and published by the board.

(b) Graduates of nonaccredited colleges of veterinary medicine outside the United States and Canada shall furnish satisfactory proof of an Educational Commission for Foreign Veterinarian Graduates (ECFVG) certificate or its equivalent provided by the American Veterinary Medical Association (AVMA), proof of completion of an internship as provided in Section 34-29-91, and of having, within three years of application to the State of Alabama, passed an examination by the United States National Board of Veterinary Medical Examiners, and proof of comprehension of and an ability to communicate in the English language.

(c) Any applicant satisfactorily completing the National Board Examination for Veterinarians in another state need not repeat the examination for licensure in Alabama.

(d) If the board determines that the applicant possesses the proper qualifications, it shall admit the applicant to the next examination; or if the applicant is eligible for a license without examination under this article, the board may grant him or her a license. (Acts 1986, No. 86-500, p. 956, § 13; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, in subsection (a) substituted "state shall" for "state must", substituted "school, and any other" for "school and is a person of good moral character and other such", and substituted "pursuant to the administrative code of the board" for "by rule"; in subsection (b) substituted "for foreign" for "of foreign", substituted "graduates" for "graduate", substituted "proof of completion of" for "completing", inserted a comma following "Examiners", and inserted "proof"; in subsection (c) substituted "for veterinarians in another state" for "within three years of application", and inserted "for licensure in Alabama"; and in subsection (d) deleted "the provisions of" preceding "this article", and substituted "grant him or her" for "forthwith grant him".

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒4.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-20.

§ 34-29-73. Examinations; public notice; passing score; issuance of licenses; retaking of examination. [AL ST SEC 34-29-73]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

(a) The board shall hold at least two examinations and may hold additional examinations as it deems necessary. The executive director or his or her designee shall give appropriate public notice of the time and place of the examination at least 120 days in advance of the date set forth for the examination. Any person desiring to take the examination shall make license application at least 60 days before the examination and pay the required application and examination fees.

(b) The preparation, administration, and grading of examinations shall be governed by the administrative code as prescribed by the board. Examinations shall be designed to test the examinee's knowledge of and proficiency in subjects and techniques commonly taught in veterinary school. To pass the examination, the examinee shall demonstrate scientific and practical knowledge sufficient to prove himself or herself a competent person to practice veterinary medicine in the judgment of the board. All examinees shall be tested by written examinations supplemented by oral interviews and practical demonstrations as the board may deem necessary. The board may adopt and use the examinations and passing criteria prepared by professional examination services approved by the American Veterinary Medical Association, in addition to a state written examination.

(c) A passing score shall be determined by the examining board prior to administering the exam.

(d) A passing score on the state examination shall be deemed to be the correct answering of at least 70 percent of the questions contained on the state written examination and on the state practical and oral examinations. The scores may not be combined.

(e) Within 60 days after each examination, the executive director or his or her designee shall notify each examinee of the results of his or her examination and the board shall issue licenses to the persons successfully completing the examination provided all requirements for licensing have been met. The executive director or his or her designee shall record the new licenses and issue a certificate of qualification to the new licensees. Any person failing an examination shall be eligible to take any subsequent examination upon payment of the application and examination fees. Any person failing an examination may retake that examination for a maximum of three times. The examination shall be given in English.

(Acts 1986, No. 86-500, p. 956, § 14; Acts 1987, No. 87-794, p. 1557, § 7; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, in subsection (a) deleted the second sentence, and in the penultimate sentence substituted "director or his or her designee" for

"secretary" and substituted "the" for "such" following "place of"; in subsection (b) inserted a comma following "administration", substituted "administrative code as" for "rules", substituted "shall" for "must" following "examinee", inserted "or herself", deleted "such" preceding "oral", inserted "and passing criteria", and inserted a comma following "Association"; in subsection (c) substituted "administering" for "the administering of", and deleted the second sentence; and in subsection (e) substituted "director or his or her designee" for "secretary" in two places, inserted "or her", substituted "qualification" for "registration", and substituted "shall be given in English" for "will be given in English only".

REFERENCES

ADMINISTRATIVE CODE

23 Ala. Admin. Code 930-X-1-.09, Board of Veterinary Medicine; Examinations.

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons 4.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-20.

§ 34-29-74. Issuance of license without written examination to certain applicants.
[AL ST SEC 34-29-74]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

The board may issue a license without a written examination to a qualified applicant who furnishes satisfactory proof that he or she is a graduate of an accredited veterinary school and who has been for the five years immediately prior to filing his or her application a practicing veterinarian licensed in a state, territory, or district of the United States having license requirements at the time the applicant was first licensed which were substantially equivalent to the requirements of this article.

The board may orally or practically examine any person qualifying for licensing under this section.

(Acts 1986, No. 86-500, p. 956, § 15; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, in the first undesignated subsection inserted "or she", inserted "or her", and inserted a comma following "territory"; and in the second undesignated subsection substituted "The" for "At its discretion, the".

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒4.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-20.

§ 34-29-75. Expiration and renewal of licenses; continuing education requirements; fees. [AL ST SEC 34-29-75]

Current through End of 2003 Organizational Session

Historical Notes References

All licenses shall expire annually on December 31 of each year but may be renewed by application to the board showing fulfillment of continuing education requirements and payment of a renewal fee established and published by the board. The executive director shall send a reminder of expiration 30 days prior to expiration by first class mail and issue a new display license and renewal card to all persons registering under this article. Failure to renew a license on or before January 1 of each year shall prompt the executive director to send a final notice by certified mail, return receipt requested, to the last address of the veterinarian known to the board. Failure to apply for renewal within 30 days after expiration shall result in notification by certified mail, return receipt requested, to the veterinarian's last address known to the board and a late penalty shall be assessed. Ten days after return receipt is received by the board, or the certified letter is returned to the board, the license shall be suspended and any person who shall practice veterinary medicine after suspension shall be practicing in violation of this article. A person may renew an expired license at any time within two years, upon application, payment of the prescribed renewal fee and a late penalty fee per year for late renewals, provided the applicant is otherwise eligible for renewal. The board may renew a license without fulfillment of the continuing education requirement to any nonpracticing veterinarian over 70 years old.

(Acts 1986, No. 86-500, p. 956, § 16; Acts 1987, No. 87-794, p. 1557, § 8; Acts 1989, No. 89-236, p. 310, § 3; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, in the first sentence substituted "31" for "thirty-first", in the second sentence substituted "director" for "secretary", substituted "expiration by first class mail" for "said expiration" and substituted "display license and renewal card" for "certificate of qualification", inserted the third sentence, in the present fourth sentence substituted "shall be" for "will be", in the present fifth sentence inserted "is" following "receipt", deleted "return of" following "or", inserted "is returned", substituted "the" for "said" preceding "license,", substituted "suspended" for "revoked", substituted "suspension" for "such revocation" and substituted "article. A" for "article, provided that any", in the penultimate sentence deleted "and the" preceding

"payment", in the final sentence deleted ", at its discretion," preceding "renew", and made nonsubstantive changes.

REFERENCES

ADMINISTRATIVE CODE

23 Ala. Admin. Code 930-X-1-.14, Board of Veterinary Medicine; License Renewal.

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons  5(2, 4).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19, 21-24, 26-27.

§ 34-29-76. License required for practice of veterinary medicine -- Certain acts prohibited. [AL ST SEC 34-29-76]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

No person shall practice Veterinary Medicine unless the person holds an active license to practice veterinary medicine in the State of Alabama and in addition:

- (1) No person shall use the name or title of Licensed Veterinarian when the person has not been licensed pursuant to this article.
- (2) No person shall present as his or her own the license of another.
- (3) No person shall give false or forged information to the board or a member thereof for the purpose of obtaining a license.
- (4) No person shall use or attempt to use a veterinarian's license which has been suspended or revoked.
- (5) No person shall knowingly employ unlicensed persons in the practice of veterinary medicine.
- (6) No person shall knowingly conceal information relative to violations of this article.
- (7) No person shall falsely represent himself or herself as being in a supervisory status without providing such supervision.
- (8) No person convicted of fraud, deceit, gross negligence, incompetency, violation of the administrative code of the board, or any other misconduct in the practice of veterinary medicine shall be allowed to retain his or her license to practice veterinary medicine and surgery in Alabama.
- (9) No person convicted of or pleading nolo contendere to a felony or a crime involving moral turpitude shall be allowed to retain his or her license to practice veterinary medicine and surgery in Alabama.

(Acts 1986, No. 86-500, p. 956, § 17; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, in subdivision (2) inserted "or her", in subdivision (5) substituted a concluding period for "; and", added subdivisions (7), (8) and (9), and made nonsubstantive changes.


REFERENCES

RESEARCH REFERENCES

Annotations:

Veterinarian's liability for malpractice. 71 A.L.R.4th 811.

American Digest System:

Physicians and Surgeons  5(1), 6(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 2-3, 5, 11-15, 18, 28.

§ 34-29-77. License required for practice of veterinary medicine -- Certain acts not prohibited. [AL ST SEC 34-29-77]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

No person shall practice veterinary medicine in the State of Alabama who is not a currently and validly licensed veterinarian or the holder of a temporary permit issued by the board. This article shall not be construed to prohibit any of the following:

(1) A student in a school or college of veterinary medicine from the performance of duties assigned by his or her instructor or from working as a veterinary student preceptee under direct or indirect supervision of a licensed veterinarian.

(2) Any doctor of veterinary medicine in the employ of a state or federal agency while actually engaged in the performance of his or her official duties; however, this exemption shall not apply to a person when he or she is not engaged in carrying out his or her official duties or is not working at or for the installations for which his or her services were engaged.

(3) Any person or his or her regular employee, administering to the ills or injuries of his or her own animals, including but not limited to, castration and dehorning of cattle unless title is transferred or employment changed for the purpose of circumventing this article.

(4) State agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under direct supervision thereof, which or who conduct experiments and scientific research on animals in the development of pharmaceuticals, biologicals, serums, or methods of treatment or techniques for diagnosis or treatment of human ailments or when engaged in the study and development of methods and techniques directly or indirectly applicable to the problems of the practice of veterinary medicine.

(5) Any unregistered assistant, nurse, lab technician, or other employee of a licensed veterinarian who administers medication or renders auxiliary or supportive

assistance under the immediate supervision of a licensed veterinarian.

(6) Qualified practitioners of veterinary medicine and surgery from without the State of Alabama consulting with Licensed Veterinarians in Alabama. No veterinarian of any other state shall actively and actually practice veterinary medicine in Alabama unless and until he or she shall obtain a license to practice veterinary medicine from the Alabama State Board of Veterinary Medical Examiners and shall comply with the other requirements contained in this article.

(7) A member of the faculty of a veterinary school performing his or her regular functions or a person lecturing or giving instructions or demonstrations at a veterinary school or in connection with continuing education courses or seminars.

(8) Persons from gratuitously giving aid, assistance, or relief in emergency cases if they do not represent themselves to be veterinarians or use any title or degree appertaining to the practice thereof.

(9) Fishery biologists actively employed by the State of Alabama, the United States government, or any person in the production or management of commercial food or game fish while in the performance of their official duties.

(10) A person from being or practicing as a "veterinary intern," as that term is defined in subdivision (20) of Section 34-29-61.

(Acts 1986, No. 86-500, p. 956, § 18; Acts 1989, No. 89-236, p. 310, § 3; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, inserted "or her" following "his" throughout the section, in the introductory matter inserted "any of the following", in subdivision (2) substituted "a person when he or she" for "such person when he", in subdivision (5) substituted "a" for "such" following "supervision of", in subdivision (6) substituted "No" for "However, no", inserted "or she" and substituted "State Board of Veterinary Medical Examiners" for "State Board of Veterinary Medicine", in subdivision (8) substituted a concluding period for "; and", in subdivision (9) substituted "Fishery" for "Fisheries" and substituted a concluding period for "; and", in subdivision (10) substituted "subdivision (20) of Section 34-29-61" for "Section 34-29-61(20)", and made nonsubstantive changes.

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒5(1), 6(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 2-3, 5, 11-15, 18, 28.

§ 34-29-78. Injunction against unauthorized practice of veterinary medicine. [AL ST SEC 34-29-78]

The board or any citizen of this state may bring action in the Circuit Court of Montgomery County to enjoin any person from practicing veterinary medicine without a currently valid license or temporary permit. If the court finds that the person is violating or is threatening to violate this article, it shall enter an injunction restraining him or her from such unlawful acts. The successful maintenance of an action based on any one of the remedies set forth in this section shall in no way prejudice the prosecution of an action based on any other of the remedies.

(Acts 1986, No. 86-500, p. 956, § 19; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, inserted "in the Circuit Court of Montgomery County", and inserted "or her".

REFERENCES

RESEARCH REFERENCES

American Digest System:

Injunction ☒89(5).

Corpus Juris Secundum:

C.J.S. Injunctions §§ 133-135.

§ 34-29-79. Right to administrative hearing; notice; procedure; notification of decision; publication of suspensions and revocations; special appointments. [AL ST SEC 34-29-79]

(a) When the board, by its official actions, acts or proposes to act in a manner which will affect the rights, duties, or privileges of the issuance of a license to an applicant or the license of a veterinarian or a veterinary technician, those persons shall have a right to an administrative hearing. When the board proposes to act in such manner, it shall give to the person or persons notice of their right to a hearing by certified mail to the person at his or her last known address, a notice of the proposed action, notice of a right to a hearing, and the time and place for a hearing, as provided in subsection (b). If the person or persons fail to appear at the time set for the hearing, the hearing may be conducted in absentia.

(b) A hearing shall be held no sooner than 20 days after written notice to the licensed veterinarian or veterinary technician of the administrative charges against him or her, or to the applicant in the case of a person whose application for license is denied. The applicant, licensed veterinarian, or veterinary technician shall have the right to be heard

in person and by counsel, the right to have subpoenaed the attendance of witnesses and records in the behalf of, and the right to cross-examine witnesses appearing against him or her. Strict rules of evidence shall not apply. The board may provide a stenographer or other stenographic means to take down the testimony and shall preserve a record of the proceedings. If a transcript of the record is prepared and is, by definition, a matter of public record, it may be purchased by any person interested in such hearing on payment to the board of the cost of preparing the transcript.

The board shall notify the applicant, licensed veterinarian, or veterinary technician of its decision in writing within a reasonable time after the conclusion of the hearing. The executive director or his or her designee, in all cases of suspension, revocation, or other discipline, shall enter the fact in the minutes of the board. Any person whose license is suspended or revoked shall be deemed an unlicensed person for purposes of this article and the probate court of that county or counties where the license should be filed shall be notified, the license pulled, and the fact published in the newsletter of the board. The board shall also cause a notice of revocation or suspension to be published in a newspaper of general circulation in each county of the State of Alabama in which the disciplined veterinarian maintains an office for the practice of veterinary medicine.

(c) When a member of the board is unable to continue the hearing either by disqualification or for any other reason, and the board is unable to obtain a quorum, the Governor shall appoint as many special members as is necessary to obtain a quorum from a list of three persons submitted for each place by the Alabama Veterinary Medical Association. These special members serve on the board only for that hearing for which they were appointed and the special members may be reappointed for subsequent hearings if necessary.

(Acts 1986, No. 86-500, p. 956, § 20; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, inserted "or her" in three places; inserted ", or Veterinary Technician" in two places; in subsection (a), in the first sentence inserted "the issuance of" and substituted "to an applicant or the license of a Veterinarian or a Veterinary Technician, those persons shall" for "of an applicant or a licensed veterinarian, those persons", in the second sentence substituted "give to the" for "give to any such", substituted "mail to the" for "mail to such", substituted "action," for "action and a" and substituted "the time and place for a hearing, as provided in subsection (b)" for "give service; and if service cannot be perfected by registered or certified mail, service may then be perfected by publication once a week for three successive weeks in a newspaper of general circulation in the county of the respondent's last known address", and rewrote the final sentence; in subsection (b), in the first sentence substituted "Licensed Veterinarian or Veterinary Technician of the administrative charges" for "applicant or Licensed Veterinarian of a complaint", substituted ", or to the applicant" for "under subsection (a) of this section, or" and deleted ", no sooner than 10 days after receipt by the board of a written request for a hearing" following "denied", deleted the second sentence, in the present second sentence substituted a comma for "or" following "the applicant" and inserted "and records", and in the final sentence inserted "and is, by

definition, a matter of public record" and substituted "preparing the" for "preparing such"; in the undesignated subsection, in the first sentence substituted a comma for "or" following "the applicant" and substituted "within a reasonable time" for "10 days", in the second sentence substituted "director or his or her designee" for "secretary" and substituted ", revocation, or other discipline" for "or revocation", in the third sentence substituted a comma for "and" following "notified", deleted "will be" preceding "published" and substituted "board" for "Alabama Veterinary Medical Association", and deleted the final sentence; in subsection (c) inserted "for" preceding "any", substituted "obtain" for "reach" in two places, substituted "shall" for "is required to", substituted "special" for "ex officio" in two places, and substituted "and the special members" for ", however, they"; and made nonsubstantive changes.

REFERENCES

RESEARCH REFERENCES

Am Jur:

51 Am Jur 2d, Licenses & Permits §§ 78 et seq., 106 et seq.

Annotations:

Administrative decision of finding based on evidence secured outside of hearing, and without presence of interested party or counsel. 18 A.L.R.2d 552.

Hearing and decision by different officers; change of personnel. 18 A.L.R.2d 606.

Wrongful refusal of license upon proper application therefor as defense to prosecution for acting without license. 30 A.L.R.2d 1006.

Counsel's absence because of attendance on legislature as ground for continuance in case before quasi-judicial officer or board. 49 A.L.R.2d 1073.

Reopening decision: Power of administrative agency to reopen and reconsider final decision as affected by lack of specific statutory authority. 73 A.L.R.2d 939.

Applicability of stare decisis doctrine to decisions of administrative agencies. 79 A.L.R.2d 1126.

Effect of court review on administrative decision. 79 A.L.R.2d 1141.

Competition: Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices. 90 A.L.R.2d 7.

Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding. 97 A.L.R.2d 1210.

Validity, construction, and effect of statutes or regulations governing practice of veterinary medicine. 8 A.L.R.4th 223.

Assistance of counsel: Right to assistance by counsel in administrative proceedings. 33 A.L.R.3d 229.

Hearsay evidence in proceedings before state administrative agencies. 36 A.L.R.3d 12.

American Digest System:

Physicians and Surgeons ☒5(2), 11.3.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19, 21-24, 43.

§ 34-29-80. Complaints and testimony to be privileged; immunity of certain persons

from suit. [AL ST SEC 34-29-80]

Current through End of 2003 Organizational Session

[References](#)

Complaints submitted to the board or testimony with respect thereto shall be absolutely privileged and no lawsuit predicated thereon may be instituted. Members of the board and their staffs, and any member of a grievance committee authorized by the board to investigate a complaint filed pursuant to this article shall be immune from suit for any conduct in the course of their official duties.

(Acts 1986, No. 86-500, p. 956, § 21.)

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-29-81. Relicensing and reinstatement. [AL ST SEC 34-29-81]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

Any person whose license is suspended or revoked by the board may be relicensed or reinstated at any time without an examination by a majority vote of the board on written application made to the board showing cause justifying relicensing and reinstatement pursuant to the administrative code of the board.

(Acts 1986, No. 86-500, p. 956, § 22; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, substituted "by" for "at the discretion of", inserted "a" preceding "majority", and substituted "the administrative code of the board" for "board rules and bylaws".

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒11.3(5).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 51-52.

§ 34-29-82. Criminal penalties. [AL ST SEC 34-29-82]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

Any person who shall practice veterinary medicine without a current valid license shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) or imprisoned for not more than 90 days, or both, and each act of unlawful practice shall constitute a distinct and separate offense. The person, in the discretion of the judge, may be imprisoned or placed at hard labor for not more than six months.

(Acts 1986, No. 86-500, p. 956, § 23; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, in the first sentence deleted "license or temporary" following "valid", substituted "five hundred dollars (\$500)" for "\$500.00", substituted "one thousand dollars (\$1,000)" for "\$1,000.00" and deleted "such" preceding "unlawful", deleted the second sentence, and in the final sentence substituted "The person, in the discretion of the judge," for "At the judge's discretion the person".

REFERENCES


RESEARCH REFERENCES

Annotations:

Failure to obtain occupational or business license or permit as defense to tort action. 13 A.L.R.2d 157.

Recovery back of money voluntarily paid to unlicensed person required by law to have occupational or business license or permit to make contract. 74 A.L.R.3d 637.

American Digest System:

Physicians and Surgeons 6(11.5).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers § 33.

§ 34-29-83. Appeal of disciplinary action; stay of revocation. [AL ST SEC 34-29-83]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

A person disciplined pursuant to this article may appeal to the Circuit Court of Montgomery County, notwithstanding the provisions of the Administrative Procedure Act. To do so, he or she shall file a petition in the circuit court within 30 days after notification of the decision of the board. The board has 15 days to enter an appearance and to file the record of the administrative proceedings. The court may affirm or set aside the decision of the board by judicial review. The license shall not be revoked

pending appeal except in extraordinary circumstances as determined by the board, and approved by the circuit court in which the appeal is pending.
(Acts 1986, No. 86-500, p. 956, § 24; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, deleted "the provisions of" preceding "this article", substituted "Montgomery County, notwithstanding the provisions of the Administrative Procedure Act", for "the county in which he resides", substituted "he or she shall" for "he must", substituted "decision of the board" for "board's decision" in two places, inserted "and to file the record of the administrative proceedings", substituted "court may" for "decision of the court can", substituted "judicial review" for "trial de novo", and substituted "shall not be" for "is not".

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒ 11.3(5).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 51-52.

§ 34-29-84. Filing of license with probate office; fee. [AL ST SEC 34-29-84]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

A person shall be responsible for filing his or her license with the probate office of the county where he or she resides or the probate office of the county where he or she may move, or each county where he or she is to practice even if he or she is not a resident. The fee shall be one dollar (\$1).

(Acts 1986, No. 86-500, p. 956, § 25; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, substituted "shall be" for "is", inserted "or her", inserted "or she" in four places, inserted a comma following "move", and substituted "one dollar (\$1)" for "\$1.00".

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒10.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 53, 57.

§ 34-29-85. Status of persons holding license on April 30, 1986. [AL ST SEC 34-29-85]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

Any person holding a valid license to practice veterinary medicine in Alabama on April 30, 1986, shall be recognized as a licensed veterinarian and shall be entitled to retain this status so long as he or she complies with this article and the administrative code of the board.

(Acts 1986, No. 86-500, p. 956, § 26; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, inserted a comma following "1986", inserted "or she", deleted "the provisions of" preceding "this article", and substituted "administrative code of the board" for "board rules adopted pursuant thereto".

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒4.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-20.

§ 34-29-86. Disposition of abandoned animals; notice to owner or agent; financial liability of owner or agent. [AL ST SEC 34-29-86]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

(a) Any animal placed in the custody of a licensed veterinarian for the treatment, boarding, or other care which shall be unclaimed by its owner or his or her agent for a period of more than 10 days after written notice by registered or certified mail, return receipt requested, to the owner or his or her agent at his or her last known address shall be deemed to be abandoned and may be turned over to the nearest humane society or dog pound or sold to collect the lien pursuant to Sections 35-11-390 and 35-11-391.

(b) The giving of notice to the owner or the agent of the owner of the animal by the licensed veterinarian as provided in subsection (a) shall relieve the Licensed Veterinarian

and custodian to whom the animal may be given of any further liability for disposal.

(c) For the purpose of this article, the term abandoned shall mean to forsake entirely, to neglect, or refuse to provide or perform the legal obligations for care and support of an animal by its owner or his or her agent. The abandonment shall constitute the relinquishment of all his or her rights and claims by the owner to the animal.

(d) The disposal of an abandoned animal shall not relieve the owner or agent thereof of any financial obligation incurred for treatment, boarding, or care by the veterinarian. (Acts 1986, No. 86-500, p. 956, § 27; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY


Amendment notes:

The 1997 amendment, effective August 1, 1997, inserted "or her" in five places; substituted "the animal" for "such animal" in three places; in subsections (a) and (d) inserted a comma following "boarding"; in subsection (a) substituted "the lien pursuant to" for "such lien as provided by"; in subsection (b) deleted "of this section" preceding "shall"; and in subsection (c) substituted "entirely, to neglect," for "entirely or to neglect", and substituted "The" for "Such".

REFERENCES

RESEARCH REFERENCES

American Digest System:

Abandoned and Lost Property  3, 5.

Corpus Juris Secundum:

C.J.S. Abandonment §§ 6, 12.

§ 34-29-87. Partnership or employment in practice of veterinary medicine not to be for nonlicensed persons; exceptions. [AL ST SEC 34-29-87]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

(a) Whenever the practice of veterinary medicine is carried on by a partnership, all partners shall be either licensed or holders of temporary licenses to practice veterinary medicine in the State of Alabama.

(b) It shall be unlawful for any licensed veterinarian to practice veterinary medicine as an employee of any person or other entity not engaged primarily in the practice of veterinary medicine or for any person that is the owner or owners of an active veterinary practice to be other than a veterinarian or veterinarians duly licensed in the State of Alabama.

(c) The following shall be exempt from this section:

(1) A veterinarian employed by a person treating his or her employer's animals.

(2) A veterinarian employed by an official agency of the federal or state government or any subdivision thereof.

- (3) A veterinarian employed by any licensed research facility.
- (4) An heir or heirs inheriting under the terms of a will or by intestate succession for a period of two years following the death of the licensee.
- (Acts 1986, No. 86-500, p. 956, § 28; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY


Amendment notes:

The 1997 amendment, effective August 1, 1997, in subsection (a) substituted "shall" for "must"; and in subsection (c), in subdivision (1) inserted "or her", and substituted a concluding period for a semicolon, in subdivision (2) substituted a concluding period for "; or", and added subdivision (4).

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons 10.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 53, 57.

§ 34-29-88. Premise permits -- Required; fees; inspection; revocation, etc.; closure and imposition of penalties; renewal; requirements for satellite or mobile clinics.
[AL ST SEC 34-29-88]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

(a) Any facility, including mobile clinics or any other premises where a licensed veterinarian practices shall have a premise permit issued by the board. Upon application and payment of a premise permit fee and an inspection fee, if necessary to cover the cost of inspection, the board shall cause a facility to be inspected. A premise permit shall be issued if the facility meets minimum standards to be adopted by the administrative code of the board as to sanitary conditions and physical plant. In lieu of the above procedure, the board may issue a premise permit to any premise which is accredited by a recognized organization whose standards meet or exceed minimum board standards as established by the administrative code of the board.

(b) Each application for premise permit shall set forth the names of all licensed veterinarians who shall be responsible for the management of the premises.

(c) The premise permit may be revoked, suspended, or denied when inspection reveals that the premises do not meet the standards set by the administrative code of the board or when the license of the responsible veterinarian or veterinarians has been suspended or revoked.

(d) The board may cause the closure of a facility and impose a penalty against any owner, operator, or responsible veterinarian of any premises operating without a premise

permit in violation of this section or in violation of the administrative code of the board. No penalties so imposed shall exceed one thousand dollars (\$1,000) for each count or separate offense. In order that the board and the executive director may determine whether or not a danger to the public or to animals exists, the executive director or investigators employed by the board may conduct inspections or investigations of premises suspected of being in violation of any rule of the board. If a violation is found in conducting an inspection which is determined to be a hazard and a danger to the public or to animals, the executive director may suspend that premise permit until further notice.

(e) All premise permits shall be renewed yearly by payment of a fee to the board.

(f) Veterinary facilities shall be reinspected periodically as determined by the board.

(g) Premise permits issued to satellite, outpatient, or mobile small animal clinics shall state the name of the full service veterinary facility in that locale providing emergency and after hours service. Premise permits issued to mobile large animal clinics shall state the name of the full service veterinary facility in that locale providing radiology, emergency, and after hours service. Mobile clinics operating in more than one locale, i.e. city, shall have a premise permit for each locale. If the agreement between the outpatient, satellite, mobile large animal clinic, mobile small animal clinic, and the full service veterinary clinic providing back-up service ceases, the board shall be notified immediately and a new agreement for back-up service shall be provided before the issuance of a new premise permit.

(Acts 1986, No. 86-500, p. 956, § 29; Acts 1987, No. 87-794, p. 1557, § 9; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, deleted subsection (b); redesignated subsections (c)-(h) as subsections (b)-(g), respectively; substituted "shall" for "must" throughout"; in subsection (a) substituted "cause a" for "cause such", and substituted "administrative code of" for "rules of"; in subsection (a) and in present subsection (c) substituted "the administrative code of the board" for "rule"; in present subsection (b) substituted "names of all Licensed Veterinarians who shall" for "name of the Licensed Veterinarian who will"; in present subsections (c) and (d) substituted "premise" for "premises"; in present subsection (d) substituted "cause the closure of a" for "after notice and hearing, cause the closure of said", substituted "in violation of the administrative code of" for "any rule promulgated by", substituted "one thousand dollars (\$1,000)" for "\$1,000.00", and added the third and fourth sentences; in present subsection (f) substituted "shall" for "will"; in present subsection (g) added the second sentence, in the penultimate sentence substituted "locale, i.e. city," for "locale (i.e. city)", and in the final sentence substituted ", mobile large animal clinic," for "or", substituted "back-up" for "emergency" in two places and substituted "the issuance of a new premise permit" for "a new premise permit will be issued"; and made nonsubstantive changes.

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒10.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 53, 57.

§ 34-29-89. Premise permits -- Display. [AL ST SEC 34-29-89]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

Each person to whom a license or premise permit, or both, is issued shall keep such license or premise permit, or both, conspicuously displayed in his or her office, place of business, or place of employment and shall, whenever required, exhibit the license or premise permit, or both, to any member or authorized representative of the board.

(Acts 1986, No. 86-500, p. 956, § 30; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, substituted "or premise permit, or both," for "and/or premise permit" in three places, inserted "or her", substituted "business," for "business", and substituted "exhibit the" for "exhibit said".

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒10.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 53, 57.

§ 34-29-90. Immunity of veterinarians from suit for emergency care of animals or human victims; nonliability to animal hospital. [AL ST SEC 34-29-90]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

(a) Any licensed veterinarian who in good faith as a volunteer and without fee renders emergency care or treatment to a domestic animal shall not be liable in a suit for damages as a result of his or her acts or omissions which may occur during emergency care or treatment, nor shall he or she be liable to any animal hospital for its expense if under emergency conditions he or she orders an animal hospitalized or causes his or her admission to a hospital.

(b) Any licensed veterinarian who in good faith renders or attempts to render emergency care at the scene of an accident or emergency to the human victim or victims

thereof shall not be liable for any civil damages as a result of any act or omissions by persons rendering or attempting to render the emergency care.
(Acts 1986, No. 86-500, p. 956, § 31; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY


Amendment notes:

The 1997 amendment, effective August 1, 1997, in subsection (a) substituted "Veterinarian" for "Alabama Veterinarian or Licensed Veterinary resident of another state or in the District of Columbia", inserted "or her" in two places, deleted "such" preceding "emergency" in two places, inserted "or she" in two places, and substituted "a hospital" for "such hospital"; and in subsection (b) deleted "such" preceding "persons".

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons  16.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 70, 81-86, 97-100, 102.

§ 34-29-91. Requirements for eligibility of graduate of nonaccredited school to take examination. [AL ST SEC 34-29-91]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

A person who is a graduate of a college of veterinary medicine not accredited by the American Veterinary Medical Association shall be eligible to take the regularly scheduled licensing examination given by the board upon furnishing all the following required documents or items:

(1) The certificate of the American Veterinary Medical Association Educational Commission for Foreign Veterinary Graduates (ECFVG).

(2) A certificate evidencing the completion of a one-year internship as required by the ECFVG in a veterinary hospital or clinic approved by the Alabama State Board of Veterinary Medical Examiners. This internship can be completed in more than one hospital or clinic; however, a minimum of three months shall be spent in any one place and the intern shall receive a variety of veterinary experience. This internship may commence prior to or following the national and state examinations and all shall be completed within an 18-month period. The sponsoring practitioner of the internship shall give a complete written report to the board at the completion of each three months which shall include a performance evaluation of the intern. The board shall insure that the internship was satisfactorily completed by the applicant prior to issuance of a state license. The ECFVG certificate shall be in addition to all other requirements expected for licensing of veterinarians in Alabama.

(3) Proof of his or her citizenship of the United States and of good moral character.
(Acts 1986, No. 86-500, p. 956, § 32; Acts 1997, No. 97-168, p. 243, § 3; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendments. -- The 1997 amendment by Acts 1997, No. 97-168, § 3, in the introductory matter inserted "all" and inserted "required documents or items", in subdivision (1) substituted a concluding period for a semicolon, in subdivision (2), in the second sentence substituted "may" for "can", in the second and third sentences substituted "shall" for "must" and in the fifth sentence substituted "satisfactory completion of the internship" for "that the internship was satisfactorily completed", deleted the undesignated subdivision which read "The ECFVG certificate is in addition to all other requirements expected for licensing of Veterinarians in Alabama; and", and in subdivision (3) deleted " of his citizenship of the United States and" following "Proof". For effective date, see the Code Commissioner's Note below.

The 1997 amendment by Acts 1997, No. 249, § 1, in subdivision (2), in the first sentence substituted "Medical Examiners" for "medicine", in the second sentence substituted "can" for "may" and added the sixth sentence, and in subdivision (3) inserted "of his or her citizenship of the United States and". For effective date, see the Code Commissioner's Note below.

Code Commissioner's Notes

Section 34-29-91 was amended by Act 97-168, which became effective April 8, 1997, and Act 97-249, which became effective August 1, 1997. Certain portions of the two acts are not in substantive conflict and can be given effect and incorporated in the code section in a manner which will make the code section intelligible. Accordingly, these portions specified in both 1997 acts have been incorporated into the code section. The 1997 amendment notes specify the changes to the section prescribed by each act. The changes made pursuant to Act 97-168 are effective April 8, 1997, and the changes made pursuant to Act 97-249 are effective August 1, 1997.

Certain portions of the two acts contain substantive conflicts which cannot be reconciled. The last sentence of subdivision (2) which reads "The ECFVC certificate is in addition to all other requirements expected for licensing of veterinarians in Alabama; and" was deleted by Act 97-168. This sentence, with a technical modification, was retained in Act 97-249. Because this sentence remains in the latter enactment, it has been preserved in the code section. In actuality, this language is of a supplemental nature and imposes no additional duty. Moreover, Act 97-168, in subdivision (3), deleted the language "his citizenship of the United States and of", while this language, with a technical modification, was preserved in Act 97-249. Because this language remains in the latter enactment, it has been preserved in the code section.

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒4.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-20.

§ 34-29-92. Service of applicants as student preceptees for minimum period. [AL ST SEC 34-29-92]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

The Alabama State Board of Veterinary Medical Examiners may require that all applicants serve as a student preceptee working under the supervision of a veterinarian licensed in any state for a minimum period of nine consecutive weeks.

(Acts 1986, No. 86-500, p. 956, § 33; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, substituted "Medical Examiners may" for "medicine is hereby authorized to".

REFERENCES

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons ☒4.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-20.

§ 34-29-93. Six months internship requirement. Repealed by Acts 1997, No. 97-249, p. 431, § 2, effective August 1, 1997. [AL ST SEC 34-29-93]

Current through End of 2003 Organizational Session

§ 34-29-94. Veterinary technical licenses and permits; application; qualifications and requirements; fees; examination; renewals; authorized acts; immunity from suit for emergency care; display of licenses and permits; suspensions and revocations; appeal; continuing education; foreign graduates. [AL ST SEC 34-29-94]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#)

(a) In order to obtain a license as a veterinary technician, the applicant shall do all of the following:

(1) Submit a complete notarized application on a form prescribed by the board setting forth that the applicant meets all of the following qualifications:

a. At least 18 years of age.

b. Of good character.

c. Has attained a competent school education and has received a diploma in animal technology from an American Veterinary Medical Association accredited school or other school of animal technology approved by the board.

(2) Submit an application accompanied by an authenticated copy of the college transcript of the applicant signed by the registrar of the college or university.

(3) Submit an application accompanied by a photograph of reasonable likeness of the applicant taken within six months of the date of the application.

(4) Submit an application fee as prescribed by the board.

(b) Notification and penalty for nonrenewal of licenses for veterinary technicians shall be applied as provided in this article for veterinarians.

(c) The board may adopt the Veterinary Technician National Examination and passing criteria prepared by the Professional Examination Service (PES), or any other veterinary technician national examination as the sole Veterinary Technicians examination or in addition to a state examination at its discretion.

(1) Examination of applicants for licensing as veterinary technicians in Alabama shall be held at least annually at a time, place, and date set by the board no later than 90 days prior to the scheduled examination.

(2) A passing score shall be determined by the examining board prior to the administration of the exam. Each applicant who passes the examination prescribed by the board shall be granted a license as a veterinary technician and shall be registered as such and a record kept by the board, and shall receive a license in a form to be prescribed by the board.

(d) There shall be an annual renewal of each veterinary technician's license and the renewal fee established and published by the board.

(e) The supervising veterinarian may require a licensed veterinary technician to perform any task for which he or she has been trained as delineated in the American Veterinary Medical Association's essential tasks list for veterinary technician teaching programs. The following tasks may be performed under the level of supervision indicated unless specifically prohibited by regulation and the supervision shall be under a licensed veterinarian currently registered to practice in this state, provided the veterinarian makes a daily physical examination of the patient treated:

(1) A veterinary technician may perform the following tasks under the indirect supervision of a veterinarian, if the animal is anesthetized, these tasks shall require the direct supervision of a veterinarian:

a. Teeth cleaning.

b. Enemas.

c. Electrocardiography.

d. Application of bandages.

e. Catheterization of the unobstructed bladder and inserting indwelling catheter.

- f. Gavage.
- g. Ear flush.
- h. Surgical site preparation.
- i. Diagnostic imaging:
 - 1. Patient preparation and positioning.
 - 2. Operation of X-ray and ultrasound machines.
 - 3. Oral and rectal administration of radio-opaque materials.
- j. Injections of medications not otherwise prohibited:
 - 1. Intramuscular.
 - 2. Subcutaneous.
 - 3. Intravenous.
- k. Oral medications.
- l. Topical medication.
- m. Laboratory:
 - 1. Collection of tissue during or after a veterinarian has performed necropsy.
 - 2. Urinalysis.
 - 3. Hematology.
 - 4. Parasitology.
 - 5. Exfoliative cytology.
 - 6. Microbiology.
 - 7. Blood chemistry.
 - 8. Serology.
 - 9. Coprology.
- n. Administration of preanesthetic drugs.
- o. Oxygen therapy.
- p. Removal of partially exposed foreign objects from skin and feet.
- q. Removal of sutures.
- r. Euthanasia.
- s. Administration of immunological agents.

(2) A veterinary technician may perform the following tasks under the direct supervision of a veterinarian:

- a. Endotracheal intubation.
- b. Blood administration and collection.
- c. Fluid aspiration.
- d. Intraperitoneal injections.
- e. Monitoring of vital signs of anesthetized patient.
- f. Application of splints.
- g. Induce anesthesia by intravenous, intramuscular, or subcutaneous injection, or by inhalation.
- h. When the animal is anesthetized, those tasks listed under subdivision (1).
- i. Suturing skin lacerations, the site shall be examined by a veterinarian prior to and following suture.

(3) A veterinary technician may perform the following tasks under the immediate supervision of a veterinarian:

- a. Assist veterinarian during surgery and diagnostics.

- b. Perform procedures listed under direct and indirect supervision.
- (4) Under the immediate supervision of a licensed veterinary technician an unregistered assistant may perform the following tasks:
 - a. Blood administration and collection.
 - b. Surgical site preparation.
 - c. Gavage.
 - d. Diagnostic imaging:
 - 1. Patient preparation and positioning.
 - 2. Film exposure.
 - 3. Oral and rectal administration of radio-opaque materials.
 - e. Intravenous injections of medications not otherwise prohibited.
 - f. Laboratory, specimen collection and preparation:
 - 1. Blood collection.
 - 2. Exfoliative cytology preparation.
 - 3. Fecal parasite sample collection and preparation.
 - g. Application of bandages.
 - h. Ear flush.
 - i. Electrocardiography.
 - j. Removal of sutures.
 - k. Euthanasia.
- (f) Under the conditions of an emergency, a certified veterinary technician may render the following lifesaving aid and treatment:
 - (1) Application of tourniquets or pressure bandages, or both, to control hemorrhage.
 - (2) Administration of pharmacological agents and parenteral fluids shall only be performed after direct communication with a veterinarian authorized to practice in this state and the veterinarian is either present or in route to the location of the distressed animal.
 - (3) Resuscitative oxygen procedures.
 - (4) Establishing open airways including intubation appliances.
 - (5) External cardiac massage.
 - (6) Application of temporary splints or bandages to prevent further injury to bones or soft tissue.
 - (7) Application of appropriate wound dressings and external supportive treatment in severe burn cases.
- (g) Any persons licensed or certified pursuant to this article who gratuitously and in good faith give emergency treatment to a sick or injured animal at the scene of an accident or emergency shall not be liable for damages to the owner of the animal in the absence of gross negligence.
- (h) Any licensed veterinary technician who in good faith renders or attempts to render emergency care at the scene of an accident or emergency to the human victim or victims thereof shall not be liable for any civil damages as a result of any act or omission by the person in rendering or attempting to render the emergency care.
- (i) Any veterinary technician shall display his or her license at his or her place of employment as to be easily accessible to the public or his or her clients.
- (j) The board shall revoke the license of any veterinary technician convicted of or

pleading nolo contendere to a felony, a crime involving moral turpitude, or who is guilty of one or more of the following:

- (1) Soliciting patients from any practitioner of the healing arts.
- (2) Willfully or negligently divulging a professional confidence or discussing a diagnosis or treatment of a veterinarian without the express permission of the veterinarian.
- (3) The habitual or excessive use of intoxicants or drugs.
- (4) Fraud or misrepresentation in applying for or procuring a license to perform as a veterinary technician or in applying for or procuring an annual registration.
- (5) Impersonating another person licensed as a veterinary technician or allowing any person to use his or her license as a technician.
- (6) Abetting or aiding the practice of veterinary medicine by a person not licensed by the board.
- (7) Gross negligence in the performance of duties, tasks, or functions assigned to him or her by a licensed veterinarian.
- (8) Manifest incapability or incompetence to perform as a Veterinary technician.

The board may revoke or suspend any license which they may have issued for violation of this article relating to the practice of veterinary medicine or the conduct of veterinary technicians, or both, for the violation of the administrative code of the board after notice and hearing proceedings, as provided by Section 34-29-79. Appeals from any adverse action of the board under this section shall be made to the Circuit Court of Montgomery County.

(k) Any veterinarian who permits a veterinary technician to work and perform the duties of a licensed technician in his or her office without having been issued a license or any licensed veterinary technician working in a veterinary office without a license shall be guilty of a misdemeanor. Nothing, however, in this article shall be construed to prevent a student of veterinary medicine from performing operations under the supervision of a competent instructor of veterinary medicine recognized by the Alabama State Board of Veterinary Medical Examiners.

(l) A minimum number of hours of continuing education shall be required yearly for license renewal as provided by the administrative code of the board.

(m) Graduates of foreign schools may take the examination for veterinary technicians by pursuing the same requirements as United States graduates after offering proof of graduation from a foreign school and, upon satisfactory completion of examination, may be licensed by the board.

(Acts 1986, No. 86-500, p. 956, § 35; Acts 1989, No. 89-236, p. 310, §§ 3, 4; Acts 1997, No. 97-249, p. 431, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1997 amendment, effective August 1, 1997, deleted the first, second and third undesignated subsections; deleted subsections (b), (d), (f), (n) and (o); redesignated the fourth undesignated subsection, subsections (e) and (g)-(m) as subsections (b), (d) and (f)-(l), respectively; added present subsections (e) and (m); substituted a concluding period for "; and" in two places; inserted "or her" in five places; in subsection (a), in the

introductory matter substituted "shall do all of the following" for "must", in subdivision (1) substituted "meets all of the following qualifications" for "is", in subdivision (2) substituted "college transcript of the applicant" for "applicant's college transcript"; in present subsection (b) deleted "permits and" following "of"; in subsection (c), in the introductory matter inserted "Veterinary Technician" in two places, deleted "Veterinary Technicians", inserted "and passing criteria" and deleted "Veterinary Technician's", in subdivision (2) substituted "shall be determined by the examining board prior to the administration of the exam" for "of 70 percent minus 1.5 standard deviation will be necessary on the State Veterinary Technician Examination" and substituted "a form" for "the form"; in present subsection (d) deleted the second sentence; in present subsection (f), in subdivision (1) substituted "or pressure bandages, or both," for "and/or pressure bandages", and in subdivision (2) substituted "the Veterinarian is" for "such Veterinarian"; in present subsection (g) substituted "of the" for "of such"; in present subsection (h) substituted "by the" for "by such"; in present subsection (i) deleted the first sentence and in the final sentence substituted "Veterinary Technician shall" for "animal technician in such employ shall also" and substituted "his or her place of employment" for "such place"; in present subsection (j) deleted subdivisions (2) and (4), redesignated subdivisions (3) and (5)-(10) as subdivisions (2)-(8), respectively, in the introductory matter substituted "shall revoke the license of any Veterinary Technician convicted of or pleading nolo contendere to a felony, a crime involving moral turpitude, or who" for "may deny or suspend or revoke any license upon the grounds that the applicant for Veterinary Technician" and inserted "one or more of the following", in present subdivision (2) substituted "diagnosis or treatment of a Veterinarian" for "Veterinarian's diagnosis or treatment", and in present subdivision (7) substituted a concluding period for "; or"; in the undesignated subsection substituted "The" for "Said", deleted "such" preceding "license", deleted "the provisions of" preceding "this article", substituted "or" for "and/or", inserted ", or both,", substituted "the Administrative Code of the" for "any of the rules and regulations of said", and substituted "Montgomery County" for "the county in which the Veterinary Technician resides"; in present subsection (k) substituted "a Veterinary" for "an animal", substituted "or any Licensed Veterinary Technician working in a Veterinary Office without a license" for "as herein provided or any person who is employed as an animal technician whose employer has not obtained a permit", deleted "and upon conviction for the first offense shall be fined not less than \$50.00 nor more than \$500.00, and for the second offense not less than \$250.00 nor more than \$500.00 and may also be imprisoned at hard labor not less than three months nor more than four months" following "misdemeanor", and substituted "Medical Examiners" for "medicine"; in present subsection (l) substituted "Administrative Code of the Board" for "Board Bylaws"; and made nonsubstantive changes.

REFERENCES

RESEARCH REFERENCES

Annotations:

Veterinarian's liability for malpractice. 71 A.L.R.4th 811.

American Digest System:

Physicians and Surgeons ☒4, 6(1), 10.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 2-3, 5, 11, 14-15, 19-20, 28, 53, 57.

ARTICLE 5. IMPAIRED VETERINARY PROFESSIONALS.

§ 34-29-110. Definitions. [AL ST SEC 34-29-110]

Current through End of 2003 Organizational Session

Historical Notes

For the purposes of this article the following terms shall have the following meanings:

(1) Impaired. The inability of a veterinary professional to practice veterinary medicine or veterinary technology with reasonable skill and safety to patients by reason of illness, inebriation, excessive use of drugs, narcotics, alcohol, chemicals, or other substances, or as a result of any physical or mental condition.

(2) Veterinary professional. A veterinary licensed to practice veterinary medicine and veterinary technicians who are licensed to practice veterinary technology.

(Act 2000-453, p. 815, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective August 1, 2000.

§ 34-29-111. Duties of board; Alabama Veterinary Professionals Wellness Committee; liability. [AL ST SEC 34-29-111]

Current through End of 2003 Organizational Session

Historical Notes References

(a) It shall be the duty and obligation of the State Board of Veterinary Medical Examiners to promote the early identification, intervention, treatment, and rehabilitation of veterinary professionals licensed to practice veterinary medicine or veterinary technology in Alabama who may be impaired by reason of illness, inebriation, excessive use of drugs, narcotics, alcohol, chemicals, or other substances, or as a result of any physical or mental condition.

(b) In order to carry out this obligation the State Board of Veterinary Medical Examiners may contract with any nonprofit corporation or medical professional association for the purpose of creating, supporting, and maintaining a committee of veterinary professionals to be designated the Alabama Veterinary Professionals Wellness Committee. The committee shall consist of not less than 10 nor more than 15 veterinary professionals licensed to practice in Alabama and selected in a manner prescribed by the board. The board may expend available funds as necessary to adequately provide for the

operational expenses of the Alabama Veterinary Professionals Wellness Committee, including, but not limited to, the actual cost of travel, office overhead, and personnel expense. The funds provided by the board for the purpose of operating expenses shall not be subject to any provision of law requiring competitive bidding.

(c) The Board of Veterinary Medical Examiners may enter into an agreement with a nonprofit corporation or medical professional association for the Alabama Veterinary Professionals Wellness Committee to undertake those functions and responsibilities specified in the agreement which may include any or all of the following:

- (1) Contracting with providers of treatment programs.
- (2) Receiving and evaluating reports of suspected impairment from any source.
- (3) Intervening in cases of verified impairment.
- (4) Referring impaired veterinary professionals to treatment programs.
- (5) Monitoring the treatment and rehabilitation of impaired veterinary professionals.
- (6) Providing post-treatment monitoring and support of rehabilitated impaired veterinary professionals.
- (7) Performing other activities as agreed by the Board of Veterinary Medical Examiners and the Alabama Veterinary Professionals Wellness Committee.

(d) The Alabama Veterinary Professionals Wellness Committee shall develop procedures in consultation with the Board of Veterinary Medical Examiners for the following:

- (1) Periodic reporting of statistical information regarding impaired veterinary professionals program activity.
- (2) Periodic disclosure and joint review of the information as the board deems appropriate regarding reports received, contracts or investigations made, and the disposition of each report, provided, however, that the committee shall not disclose any personally identifiable information except as provided in this article.

(e) Any veterinary professional licensed in Alabama who shall be duly appointed to serve as a member of the Alabama Veterinary Professionals Wellness Committee and any auxiliary personnel, consultants, attorneys, or other volunteers or employees of the committee taking any action authorized by this article, engaging in the performance of any duties on behalf of the committee, or participating in any administrative or judicial proceeding resulting therefrom, shall, in the performance and operation thereof, be immune from any liability, civil or criminal, that might otherwise be incurred or imposed. Any nonprofit corporation or medical professional association or state or county veterinary medical association that contracts with or receives funds from the State Board of Veterinary Medical Examiners for the creation, support, and operation of the Alabama Veterinary Professionals Wellness Committee shall, in so doing, be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

(f) All information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the Alabama Veterinary Professionals Wellness Committee and any findings, conclusions, recommendations, or reports resulting from the investigations, interventions, treatment, or rehabilitation, or other proceedings of such committee are declared to be privileged and confidential. All records and proceedings of the committee pertaining to the impaired veterinary professional shall be confidential and shall be used by the committee and the members thereof only in the exercise of the proper

function of the committee and shall not be public records nor available for court subpoena or for discovery proceedings. In the event of a breach of contract between the committee and the impaired veterinary professional, any and all records pertaining to the conduct determined to cause the breach of contract will be disclosed to the regulatory board upon its request for disciplinary purposes only. Nothing contained herein shall apply to records made in the regular course of business of a veterinary professional and information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because they were presented or considered during the proceedings of the Alabama Veterinary Professionals Wellness Committee.

(g) The Alabama Veterinary Professionals Wellness Committee shall render an annual report to the State Board of Veterinary Medical Examiners concerning the operations and proceedings of the committee for the preceding year. The committee shall report to the board any veterinary professional who in the opinion of the committee is unable to practice veterinary medicine or veterinary technology with reasonable skill and safety to patients by reason of illness, inebriation, excessive use of drugs, narcotics, alcohol, chemicals, or other substances, or as a result of any physical or mental condition when it appears that the veterinary professional is currently in need of intervention, treatment, or rehabilitation and the veterinary professional has failed or refused to participate in programs of treatment or rehabilitation recommended by the committee. A report to the Alabama Veterinary Professionals Wellness Committee shall be deemed to be a report to the Board of Veterinary Medical Examiners for the purposes of any mandated reporting of veterinary professional impairment otherwise provided for by law.

(h) If the Board of Veterinary Medical Examiners has reasonable cause to believe that a veterinary professional is impaired, the board may cause an evaluation of the veterinary professional to be conducted by the Alabama Veterinary Professionals Wellness Committee for the purpose of determining if there is an impairment. The Alabama Veterinary Professionals Wellness Committee shall report the findings of its evaluation to the Board of Veterinary Medical Examiners.

(Act 2000-453, p. 815, § 2.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective August 1, 2000.

REFERENCES

ADMINISTRATIVE CODE

23 Ala. Admin. Code 930-X-1-.34, Board of Veterinary Medicine; Alabama Veterinary Professionals Wellness Committee.

RESEARCH REFERENCES

American Digest System:

Physicians and Surgeons 5(1), 10.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18, 53, 57.

CHAPTER 2. CONTROLLED SUBSTANCES.

REFERENCES

CROSS REFERENCES

As to controlled substance registration certificate, see § 34-24-61.

ARTICLE 1. GENERAL PROVISIONS.

REFERENCES

CROSS REFERENCES

As to drug trafficking offenses, see §§ 13A-12-230 through 13A-12-232.

As to sale of drugs on or near school campus, see § 13A-12-250.

As to drug paraphernalia offenses, see § 13A-12-260.

As to sale of drugs at or near housing project, see § 13A-12-270.

As to drug abuse education, see § 16-41-1 et seq.

As to inchoate drug offenses, see §§ 13A-12-201 through 13A-12-205.

As to drug possession and sale offenses, see §§ 13A-12-210 through 13A-12-216.

RESEARCH REFERENCES

Am Jur:

25 Am Jur 2d, Drugs, Narcotics, & Poisons § 35.

Corpus Juris Secundum:

28 CJS, Drugs & Narcotics § 100.

ANNOTATIONS

CASENOTES

Burden of proof 5.5 enter p

1. Constitutionality

Chapter satisfies requirement of section 45 of Constitution of having a single subject clearly expressed in its title. *Boswell v. State*, 290 Ala. 349, 276 So.2d 592 (1973), appeal dismissed 414 U.S. 1118, 38 L. Ed. 2d 747, 94 S. Ct. 855; *Powers v. State*, 49 Ala.App. 690, 275 So.2d 369 (Crim. App. 1973); *Sawyer v. State*, 50 Ala.App. 490, 280 So.2d 196 (Crim. App. 1973); *Palmer v. State*, 54 Ala.App. 707, 312 So.2d 399 (Crim. App. 1975).

Purpose of chapter. One of the purposes of the Alabama Uniform Controlled Substances Act was to standardize all laws in this state to be in conformity with the new federal Comprehensive Drug Abuse Prevention and Control Act of 1970. *Felder v. State*, 420 So.2d 851 (Ala.Crim.App.1982).

As to the constitutionality of the Alabama Uniform Controlled Substances Act, see

Collier v. State, 413 So.2d 396 (Ala.Crim.App.1981), affirmed 413 So.2d 403.

Alabama Uniform Controlled Substances Act satisfies the constitutional requirement of having a single subject. Reynolds v. State, 56 Ala.App. 509, 323 So.2d 394 (Ala.Crim.App.1975), certiorari denied 295 Ala. 415, 323 So.2d 404.

Title of Alabama Uniform Controlled Substances Act is fair expression of single subject there encompassed. Warren v. State, 52 Ala.App. 35, 288 So.2d 817 (Ala.Crim.App.1973), reversed 292 Ala. 71, 288 So.2d 826, on remand 52 Ala.App. 708, 288 So.2d 832.

2. Purpose

The Alabama Controlled Substances Act was drafted in 1971 to standardize all laws in this state to be in conformity with the new Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 801 et seq.), and, for the most part tracks quite closely the federal act and the Uniform Controlled Substances Act promulgated by the National Conference of Commissioners on Uniform State Laws. Thus, the Alabama act does contain the five separate schedules designed to classify drugs according to their "abuse potential, and psychological and physical effects." Vogel v. State, 426 So.2d 863 (Ala.Crim.App.1980), affirmed 426 So.2d 882, certiorari denied 103 S.Ct. 2456, 462 U.S. 1107, 77 L.Ed.2d 1335.

Intent of chapter. It was the intent of the legislature to prevent drug abuse, control drug possession and generally standardize Alabama's drug laws in enacting the Uniform Controlled Substances Act. Warren v. State, 52 Ala.App. 35, 288 So.2d 817 (Ala.Crim.App.1973), reversed 292 Ala. 71, 288 So.2d 826, on remand 52 Ala.App. 708, 288 So.2d 832.

3. Knowledge of presence of illegal substance

Guilty knowledge of the presence of the illegal substance may be established by circumstantial evidence. Moore v. State, 457 So.2d 981 (Ala.Crim.App.1984), certiorari denied 105 S.Ct. 1757, 470 U.S. 1053, 84 L.Ed.2d 820.

Knowledge of presence prerequisite to possession conviction. Knowledge by the accused of the presence of the controlled substance is an essential element and prerequisite to conviction for the offense of illegal possession of a controlled substance under the Alabama Controlled Substances Act. Temple v. State, 366 So.2d 740 (Ala.Crim.App.1978).

4. Indictment or complaint

Indictment need not state vendee but unlawful intent must be proven. In an indictment for violating the Alabama Uniform Controlled Substances Act it is not necessary to state the name of the donee or vendee of the drug, but the state must prove that the drug was unlawfully and intentionally given to a person. Ard v. State, 358 So.2d 792 (Ala.Crim.App.1978), certiorari denied 358 So.2d 794.

Use of letters "U.C.S.A." in complaint is improper. There is no authority holding that these initials stand for and may be considered as referring to the Uniform Controlled Substances Act. Miller v. State, 54 Ala.App. 230, 307 So.2d 40 (Ala.Crim.App.1974).

Indictments. It is not necessary for an indictment charging a sale in violation of the Uniform Controlled Substances Act to contain the name of the vendee or to state the

place of the alleged crime. *Isbell v. State*, 54 Ala.App. 85, 304 So.2d 904 (Ala.Crim.App.1974).

5. Jury questions

When the presence of the accused at the scene is established and evidence of his knowledge of the presence of the illegal substance is shown -- even by circumstantial evidence -- along with any other incriminating evidence, the issue of the appellant's guilt should be submitted to the jury. *Moore v. State*, 457 So.2d 981 (Ala.Crim.App.1984), certiorari denied 105 S.Ct. 1757, 470 U.S. 1053, 84 L.Ed.2d 820.

5.5. Burden of proof

The standard of proof is reasonable satisfaction in a civil forfeiture proceeding based on violation of the Uniform Controlled Substances Act. *Harris v. State*, 821 So.2d 177 (Ala.2001).

6. Sufficiency of evidence

While mere proximity to contraband is not enough to establish constructive possession, where other circumstantial evidence is sufficiently probative, proximity to contraband coupled with inferred knowledge of its presence will support a finding of guilt on such charges. *Moore v. State*, 457 So.2d 981 (Ala.Crim.App.1984), certiorari denied 105 S.Ct. 1757, 470 U.S. 1053, 84 L.Ed.2d 820.

Identification of a controlled substance by a state toxicologist is sufficient to constitute a prima facie case. *Harmon v. State*, 420 So.2d 299 (Ala.Crim.App.1982).

7. Jury instructions

A trial court can properly take judicial notice of whether a substance is designated as a controlled substance and can so instruct the jury. *Gilbert v. State*, 401 So.2d 342 (Ala.Crim.App.1981); *Harmon v. State*, 420 So.2d 299 (Ala.Crim.App.1982).

Not required to charge attempt if no inference drawn. Although offense of an attempt to violate the Alabama Uniform Controlled Substances Act was included in the indictment for selling, furnishing or giving away marihuana, where there was no evidence from which an inference could be drawn that the appellant attempted to give away the marihuana, but failed, trial court did not err in refusing to charge the jury on the law of an attempt to violate the Alabama Uniform Controlled Substances Act. *Ard v. State*, 358 So.2d 792 (Ala.Crim.App.1978), certiorari denied 358 So.2d 794.

8. Miscellaneous

Selling marihuana is a crime involving moral turpitude and a conviction thereof can be shown in cross-examination of a witness as affecting the witness' credibility, even though it is not otherwise admissible. *Hatcher v. State*, 359 So.2d 1168 (Ala.Crim.App.1978).

Cited in *Powers v. State*, 48 Ala.App. 299, 264 So.2d 220 (Crim. App. 1972), appeal after remand 49 Ala.App. 690, 275 So.2d 369 (Crim. App.); *Morrow v. State*, 52 Ala.App. 145, 290 So.2d 209 (Crim. App. 1973), cert. denied 292 Ala. 743, 290 So.2d 213 and cert. denied 419 U.S. 853, 42 L. Ed. 2d 85, 95 S. Ct. 97; *Barnett v. State*, 52

Ala.App. 260, 291 So.2d 353 (Crim. App. 1974); Phillips v. State, 52 Ala.App. 297, 291 So.2d 751 (Crim. App. 1973); Christian v. Tuscaloosa, 53 Ala.App. 81, 297 So.2d 405 (Crim. App. 1974); Seibert v. State, 53 Ala.App. 229, 298 So.2d 649 (Crim. App. 1974), cert. denied 292 Ala. 748, 298 So.2d 652; Oury v. State, 53 Ala.App. 240, 298 So.2d 661 (Crim. App. 1974); Russell v. State, 53 Ala.App. 447, 301 So.2d 214 (Crim. App. 1974); McDaniel v. State, 54 Ala.App. 314, 307 So.2d 710 (Crim. App. 1974), cert. denied 293 Ala. 765, 307 So.2d 712; Cabbie v. State, 347 So.2d 546 (Ala.Crim.App.1977), cert. denied 347 So.2d 551(Ala.); Moss v. State, 347 So.2d 569 (Ala. Crim. App.1977); Hill v. State, 348 So.2d 848 (Ala.Crim.App.1977), cert. denied 348 So.2d 847 (Ala.); Hagendorfer v. State, 348 So.2d 1097 (Ala.Crim.App.1977), cert. denied 348 So.2d 11101 (Ala.) and cert. denied 434 U.S. 1046, 54 L. Ed. 2d 797, 98 S. Ct. 891; Williams v. State, 348 So.2d 1113 (Ala.Crim.App.1977), cert. denied 348 So.2d 1116 (Ala.); Jones v. State, 348 So.2d 1116 (Ala.Crim.App.1977), cert. denied 348 So.2d 1120 (Ala.); Roberts v. State, 349 So.2d 89 (Ala.Crim.App.1977), cert. denied 349 So.2d 94 (Ala.); Sexton v. State, 349 So.2d 126 (Ala. Crim. App.1977); Lee v. State, 350 So.2d 743 (Ala. Crim. App.1977); House v. State, 350 So.2d 752 (Ala.Crim.App.1977); Braxton v. State, 350 So.2d 753 (Ala.Crim.App.1977); Messelt v. State, 351 So.2d 630, 636, 640 (Ala.Crim.App.1977); Rogers v. State, 353 So.2d 19 (Ala.Crim.App.1977), cert. denied 353 So.2d 25 (Ala.); Lewis v. State, 353 So.2d 60 (Ala.Crim.App.1977); Williams v. State, 356 So.2d 216 (Ala.Crim.App.1977), cert. quashed 356 So.2d 219 (Ala.); Hatton v. State, 359 So.2d 822 (Ala.Crim.App.1977), cert. quashed 359 So.2d 832 (Ala.); Williams v. State, 361 So.2d 1116 (Ala.Crim.App.1977), cert. quashed 361 So.2d 1124 (Ala.); Walker v. State, 358 So.2d 800 (Ala.Crim.App.1978); Winnings v. State, 370 So.2d 323 (Ala.Crim.App.1979), cert. denied 370 So.2d 329 (Ala.); Consalvo v. State, 372 So.2d 44 (Ala.Crim.App.1979), cert. denied 372 So.2d 49 (Ala.), cert. denied 444 U.S. 953, 62 L. Ed. 2d 324, 100 S. Ct. 429; United States v. Beck, 602 F.2d 726 (5th Cir. Ala.1979); Conner v. State, 382 So.2d 601 (Ala.Crim.App.1979), cert. denied 382 So.2d 605 (Ala.); Giles v. State, 382 So.2d 1177 (Ala.Crim.App.1980); Patton v. State, 384 So.2d 19 (Ala.Crim.App.1980), cert. denied 384 So.2d 23 (Ala.); Mitchum v. State, 384 So.2d 1193 (Ala.Crim.App.1980), cert. denied 384 So.2d 1205 (Ala.); Green v. State, 384 So.2d 1215 (Ala.Crim.App.1980); Winslett v. State, 385 So.2d 1334 (Ala.Crim.App.1980), cert. quashed 385 So.2d 1348 (Ala.); Hare v. State, 387 So.2d 299 (Ala.Crim.App.1980); Green v. State, 389 So.2d 537 (Ala.Crim.App.1980), cert. denied 389 So.2d 541 (Ala.); Lake v. State, 390 So.2d 1088 (Ala.Crim.App.1980), cert. denied 390 So.2d 1093 (Ala.) and cert. denied 450 U.S. 1004, 68 L. Ed. 2d 207, 101 S. Ct. 1715; Thornton v. State, 390 So.2d 1093 (Ala.Crim.App.1980), cert. denied 390 So.2d 1098 (Ala.) and cert. denied 450 U.S. 998, 68 L. Ed. 2d 200, 101 S. Ct. 1704; Free v. State, 392 So.2d 857 (Ala.Crim.App.1980), cert. denied 392 So.2d 859 (Ala.) and cert. denied 451 U.S. 990, 68 L. Ed. 2d 850, 101 S. Ct. 2329, reh'g denied 452 U.S. 973, 69 L. Ed. 2d 985, 101 S. Ct. 3129; Touch v. State, 399 So.2d 934 (Ala.Crim.App.1981); State v. McCurley, 412 So.2d 1236 (Ala.1981); Box v. State, 419 So.2d 604 (Ala.Crim.App.1981), cert. denied 459 U.S. 1147, 74 L. Ed. 2d 995, 103 S. Ct. 789; A-1 Bonding Co. v. State, 420 So.2d 778 (Ala.Civ.App.1981), cause remanded 420 So.2d 781 (Ala.), on remand 420 So.2d 782 (Ala. Civ. App.); Vest v. State, 420 So.2d 803 (Ala.Crim.App.1981).

§ 20-2-1. Short title. [AL ST SEC 20-2-1]

Current through End of 2003 Organizational Session

[References](#) [Annotations](#)

This chapter may be cited as the Alabama Uniform Controlled Substances Act. (Acts 1971, No. 1407, p. 2378, § 511.)

REFERENCES

RESEARCH REFERENCES

Annotations:

Defense of necessity, duress, or coercion in prosecution for violation of state narcotics laws. 1 A.L.R.5th 938.

ANNOTATIONS

CASENOTES

1. In general

Guilty plea set aside where mistaken application of habitual offender act. Defendant was entitled to have his guilty plea set aside where the defendant, his attorney, the prosecutor, and the trial court all mistakenly thought that the Habitual Felony Offender Act was applicable to narcotic defendants and the defendant had alleged that he would not have pleaded guilty if he had not been faced with the sentence of the habitual offender since even in the case of a negotiated plea, the higher courts require that the accused be informed of the correct range of maximum and minimum penalties. *Hall v. State*, 540 So.2d 813 (Ala.Crim.App.1988).

Cited in *Dannelley v. State*, 397 So.2d 555 (Ala.Crim.App.1981), cert. denied 397 So.2d 577 (Ala.), cert. denied 454 U.S. 856, 70 L. Ed. 2d 151, 102 S. Ct. 305; *Jones v. State*, 432 So.2d 19 (Ala. Crim. App.1983); *Marty v. State*, 444 So.2d 407 (Ala. Crim. App.1984); *Moore v. State*, 457 So.2d 981 (Ala.Crim.App.1984), cert. denied 470 U.S. 1053, 84 L. Ed. 2d 820, 105 S. Ct. 1757; *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985); *Ex parte Tucker*, 474 So.2d 134 (Ala.1985), on remand 474 So.2d 136 (Ala. Crim. App.); *Wilson v. State*, 520 So.2d 205 (Ala.Crim.App.1987); *Ward v. State*, 630 So.2d 157 (Ala.Crim.App.1993).

§ 20-2-2. Definitions. [AL ST SEC 20-2-2]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#) [Annotations](#)

When used in this chapter, the following words and phrases shall have the following meanings, respectively, unless the context clearly indicates otherwise:

- (1) Administer. The direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

- a. A practitioner or, in his or her presence, his or her authorized agent.
 - b. The patient or research subject at the direction and in the presence of the practitioner.
- (2) Agent. An authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. Such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.
- (3) Certifying boards. The State Board of Medical Examiners, the State Board of Health, the State Board of Pharmacy, the State Board of Dental Examiners, the State Board of Podiatry, and the State Board of Veterinary Medical Examiners.
- (4) Controlled substance. A drug, substance, or immediate precursor in Schedules I through V of Article 2 of this chapter.
- (5) Counterfeit substance. Substances which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device or any likeness thereof of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.
- (6) Deliver or delivery. The actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.
- (7) Dispense. To deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.
- (8) Dispenser. A practitioner who dispenses.
- (9) Distribute. To deliver other than by administering or dispensing a controlled substance.
- (10) Distributor. A person who distributes.
- (11) Drug.
- a. Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary or any supplement to any of them.
 - b. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals.
 - c. Substances (other than food) intended to affect the structure or any function of the body of man or animals.
 - d. Substances intended for use as a component of any article specified in paragraphs a, b, or c of this subdivision. Such term does not include devices or their components, parts, or accessories.
- (12) Immediate precursor. A substance which the State Board of Pharmacy has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.
- (13) Manufacture. The production, preparation, propagation, compounding, conversion, or processing of a controlled substance either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical

synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container; except, that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

- a. By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or
- b. By a practitioner or by his or her authorized agent under his or her supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(14) Marihuana. All parts of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. Such term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(15) Narcotic drug. Any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

- a. Opium and opiate and any salt, compound, derivative, or preparation of opium or opiate.
- b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph a, but not including the isoquinoline alkaloids of opium.
- c. Opium poppy and poppy straw.
- d. Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(16) Opiate. Any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. Such term does not include, unless specifically designated as controlled under this section, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). Such term does include its racemic and levorotatory forms.

(17) Opium poppy. The plant of the species *Papaver somniferum* L., except its seeds.

(18) Person. Individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association or any other legal entity.

(19) Poppy straw. All parts, except the seeds, of the opium poppy, after mowing.

(20) Practitioner.

- a. A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct

research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(21) Production. The manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(22) State. When applied to a part of the United States, such term includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(23) Ultimate user. A person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his or her household.

(Acts 1971, No. 1407, p. 2378, § 101; Acts 1976, No. 699, p. 965, § 1; Acts 1989, No. 89-242, p. 342, § 3; Act 2001-971, 3rd Sp. Sess., p. 873, § 2.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1989 amendment, effective April 6, 1989, inserted "the state board of podiatry" in subdivision (4).

The 2001 amendment, effective September 26, 2001, in subdivision (1), in subparagraph a. inserted "or her", substituted a period for "; or", deleted subdivision (3), redesignated subdivisions (4)-(24) as subdivisions (3)-(23), in subdivision (13) deleted "the preparation or compounding of a controlled substance by an individual for his own use or" preceding "the preparation", in subparagraphs a. and b. inserted "or her" in four places, in subdivision (2), in subparagraph a. deleted "pharmacist," following "dentist," in subdivision (23) inserted "or her" in four places, and made nonsubstantive changes.

REFERENCES

RESEARCH REFERENCES

Annotations:

Marijuana, psilocybin, peyote or similar drugs of vegetable origin as narcotics for purposes of drug prosecution. 50 A.L.R.3d 1164.

Corpus Juris Secundum:

28 CJS, Drugs & Narcotics §§ 2-6.

ANNOTATIONS

CASENOTES

1. "Furnish"

To furnish means to supply by any means, by sale or otherwise, and a sale need not

be shown. *McKissick v. State*, 522 So.2d 3 (Ala.Crim.App.1987).

Under a statutory provision denouncing the offense of furnishing narcotic drugs, it is immaterial that the defendant furnished the narcotic or dangerous drug in the role of an agent between the purchaser and the supplier or the seller and the buyer. *McKissick v. State*, 522 So.2d 3 (Ala.Crim.App.1987).

2. "Manufacture"

State failed to show defendant was attempting to "manufacture" drug. The mere fact that the chemicals, the drugmaking paraphernalia, and the drug-related literature necessary for preparation and compounding of methylenedioxymethamphetamine (MDMA) were discovered in defendant's apartment was insufficient to prove that defendant was attempting to "manufacture" the drug for other than his own use, as "manufacture" is defined in this section; the state offered no evidence to establish what quantity, if any, would indicate that the preparation and compounding of a drug was for something other than one's own use; the state offered no evidence of a sale for the drugs; furthermore, there was no evidence that defendant had previously dealt in drugs or any evidence that he was going to deal in drugs in the future. *Ex parte Colbert*, 615 So.2d 1218 (Ala.1992), on remand 615 So.2d 1221.

3. "Marihuana"

State failed to establish that seeds it weighed were marihuana. Where a toxicologist testified that seeds were weighed with the other plant material and that those seeds were never tested to see if they met the statutory definition of marihuana, the state failed to establish that the seeds it weighed were "marihuana," as that term has been defined by the legislature; trafficking convictions based upon such evidence were reversed due to insufficient evidence. *Ex parte Presley*, 587 So.2d 1022 (Ala.1991), on remand 587 So.2d 1027.

Flowering tops and branches included in determining weight of marihuana. Nowhere in the exclusion clause is there a mention of either the flowering tops or the branches of the plant. Therefore, both fall within the definition of "marihuana," and likewise both were properly included in determining the weight of the marihuana in defendant's possession. *Day v. State*, 539 So.2d 410 (Ala.Crim.App.1988).

Marihuana and cannabis are one and the same substance. *Campbell v. State*, 479 So.2d 1294 (Ala.Crim.App.1985), affirmed 479 So.2d 1299, certiorari denied 106 S.Ct. 573, 474 U.S. 1021, 88 L.Ed.2d 557.

Definition of cannabis as used in section 20-2-80(1) is considered the same as the definition of marihuana found in subdivision (15) of this section. *Dickerson v. State*, 414 So.2d 998 (Ala.Crim.App.1982).

"Marijuana" contains "tetrahydrocannabinol (THC)." *Sharpe v. State*, 384 So.2d 633 (Ala.Crim.App.1980).

Section limits the term "marihuana" to cannabis sativa Linnaeus. *Smith v. State*, 335 So.2d 393 (Ala.Crim.App.1976), certiorari denied 335 So.2d 397, certiorari denied 335 So.2d 398.

Change from "marijuana" in prior drug law to "marihuana" went from showing the lawmakers' meaning by way of description (or illustration) over to a purported precise definition, i.e., of equivalency. *Haynes v. State*, 54 Ala.App. 714, 312 So.2d 406

(Ala.Crim.App.1975), certiorari denied 294 Ala. 758, 312 So.2d 414.

Subdivision (15) uses taxonomic definitive nomenclature. In lieu of enumerative classification built around the chemical characteristics of the cannabis plant in all its varieties and synthetic derivatives in prior drug law, subdivision (15) substituted taxonomic definitive nomenclature. Haynes v. State, 54 Ala.App. 714, 312 So.2d 406 (Ala.Crim.App.1975), certiorari denied 294 Ala. 758, 312 So.2d 414.

Tetrahydrocannabinols embrace chemically that which is covered by the dictionary word "marijuana." Haynes v. State, 54 Ala.App. 714, 312 So.2d 406 (Ala.Crim.App.1975), certiorari denied 294 Ala. 758, 312 So.2d 414.

4. -- Sufficiency of indictment

Where the substance alleged to have been sold, furnished or given away was spelled "marijuana" in the indictment as distinguished from "marihuana" as it is found in the Alabama Uniform Controlled Substances Act (§ 20-2-23(3)(j)), the corpus delicti was proved by evidence showing that "marijuana" had been sold without any evidence showing that it contained "tetrahydrocannabinol" since it has been held that "marijuana" contains "tetrahydrocannabinol." Sharpe v. State, 384 So.2d 633 (Ala.Crim.App.1980).

Use of word "marijuana" and not "marihuana" in the indictment apprised the defendant that he was accused of selling a substance containing tetrahydrocannabinol. Smith v. State, 335 So.2d 393 (Ala.Crim.App.1976), certiorari denied 335 So.2d 397, certiorari denied 335 So.2d 398.

Under an indictment the use of the word "marijuana" apprised the defendant that he was accused of possessing tetrahydrocannabinol. McKenzie v. State, 57 Ala.App. 69, 326 So.2d 135 (Ala.Crim.App.1976).

Sufficiency of indictment using word "marijuana". Where the state in an indictment used the older more general term "marijuana," this term, both in statutory prior usage and in common parlance, comprehended the chemical classification rather than that of taxonomy. Hence, the defendant was apprised by the indictment that he was accused of possessing a substance containing the incriminating ingredient of THC--tetrahydrocannabinol. Haynes v. State, 54 Ala.App. 714, 312 So.2d 406 (Ala.Crim.App.1975), certiorari denied 294 Ala. 758, 312 So.2d 414.

5. -- Burden of proof

Burden of proof. When a defendant is being prosecuted for trafficking in marihuana, the burden is on the state to prove that the defendant was in possession of more than 2.2 pounds of marihuana as is defined by subdivision (15). Wright v. State, 570 So.2d 872 (Ala.Crim.App.1990).

Once the state proves that the defendant is in possession of more than 2.2 pounds of marihuana, the burden is on the defendant to prove that the marihuana contained excludable matter. Wright v. State, 570 So.2d 872 (Ala.Crim.App.1990).

The burden was on defendant to establish that the marihuana which he possessed contained excludable matter falling within the definition of such under subdivision (15). Campbell v. State, 479 So.2d 1294 (Ala.Crim.App.1985), affirmed 479 So.2d 1299, certiorari denied 106 S.Ct. 573, 474 U.S. 1021, 88 L.Ed.2d 557.

6. Miscellaneous

Defense prevented from cross-examining chemist on what parts of plant were illegal. The trial court did not abuse its discretion in preventing defense counsel from cross-examining the state chemist on her knowledge of what parts of the marihuana plant were illegal under the statute. *Presley v. State*, 587 So.2d 1016 (Ala.Crim.App.1990), reversed 587 So.2d 1022, on remand 587 So.2d 1027.

Transferred possession issue. It made no difference if defendant was merely acting as an agent for the buyer. The issue was, simply, whether he transferred possession. At the moment appellant received the marihuana from the driver of the vehicle, he had the control and power to do with it as he wished. The record shows that he chose to hand it immediately to the buyer. *McKissick v. State*, 522 So.2d 3 (Ala.Crim.App.1987).

In a close case as to whether the marihuana possessed by defendant was for his personal use only, which would be a misdemeanor as distinguished from a felony, evidence that a material part of the marijuana was not a controlled substance would make an instruction as to the parts of the marijuana that are not contraband appropriate. *Hodge v. State*, 435 So.2d 196 (Ala.Crim.App.1983).

"Including" as used in this section is not a word of limitation, but rather one of enlargement. *Haynes v. State*, 54 Ala.App. 714, 312 So.2d 406 (Ala.Crim.App.1975), certiorari denied 294 Ala. 758, 312 So.2d 414.

Cited in *Hill v. State*, 56 Ala.App. 369, 321 So.2d 708 (Crim. App. 1975), cert. denied 295 Ala. 405, 321 So.2d 713; *Mixon v. State*, 57 Ala.App. 643, 331 So.2d 399 (Crim. App. 1976); *Slaughter v. State*, 411 So.2d 819 (Ala. Crim. App.1981); *Collier v. State*, 413 So.2d 396 (Ala.Crim.App.1981), aff'd 413 So.2d 403(Ala.); *Vogel v. State*, 426 So.2d 863 (Ala.Crim.App.1980), aff'd 426 So.2d 882 (Ala.), cert. denied 462 U.S. 1107, 77 L. Ed. 2d 1335, 103 S. Ct. 2456; *Ellis v. State*, 428 So.2d 142 (Ala. Crim. App.1982); *McCrary v. State*, 429 So.2d 1121 (Ala.Crim.App.1982), cert. denied 464 U.S. 913, 78 L. Ed. 2d 254, 104 S. Ct. 273; *Jones v. State*, 432 So.2d 19 (Ala.Crim.App.1983); *Luster v. State*, 433 So.2d 481 (Ala. Crim. App.1983); *Wallace v. State*, 437 So.2d 648 (Ala. Crim. App.1983); *Lyons v. State*, 455 So.2d 295 (Ala. Crim. App.1984); *Haggermaker v. State*, 466 So.2d 193 (Ala. Crim. App.1985); *Garrett v. State*, 504 So.2d 319 (Ala. Crim. App.1986); *Barron v. State*, 562 So.2d 292 (Ala.Crim.App.1990), reh'g denied, without op. (Ala. Crim. App.) and post-conviction relief denied 682 So.2d 505(Ala. Crim. App.); *Ex parte Bohannon*, 564 So.2d 854 (Ala.1988), on remand 564 So.2d 859 (Ala. Crim. App.), cert. quashed, without op.(Ala.).

§ 20-2-3. Immunity of persons reporting suspected use, etc., of controlled substance by minor child.[AL ST SEC 20-2-3]

Current through End of 2003 Organizational Session

All persons employed in any capacity in the public, private, and church elementary and secondary schools shall be immune from civil liability for communicating information to the parents of a minor child, law enforcement officers, or health care providers concerning the suspected use, possession, sale, distribution of any controlled substance as defined in Chapter 2 of Title 20, by any minor child as defined by law. Notwithstanding the foregoing, this immunity shall not apply if said person communicated such information maliciously and with knowledge that it was false.

(Acts 1985, No. 85-239, p. 138.)

ARTICLE 2. STANDARDS AND SCHEDULES.

REFERENCES

ADMINISTRATIVE CODE

9C Ala. Admin. Code 420-7-2 App., Department of Public Health; Controlled Substances List.

RESEARCH REFERENCES

Corpus Juris Secundum:

28 CJS, Drugs & Narcotics § 7.

ANNOTATIONS

CASENOTES

1. Generally

Only relevance of the schedules is to act as a definitional scheme for indicating what are controlled substances, the possession of which is prohibited by the statute; this is further bolstered by the definition of a controlled substance as a drug, substance or immediate precursor in schedules I through V of this article. *Vogel v. State*, 426 So.2d 863 (Ala.Crim.App.1980), affirmed 426 So.2d 882, certiorari denied 103 S.Ct. 2456, 462 U.S. 1107, 77 L.Ed.2d 1335.

Cited in *Jones v. State*, 432 So.2d 19 (Ala.Crim.App.1983).

§ 20-2-20. Administration of chapter. [AL ST SEC 20-2-20]

Current through End of 2003 Organizational Session

[Historical Notes](#) [Annotations](#)

(a) The State Board of Health, unless otherwise specified, shall administer this chapter and may add substances to or delete or reschedule all substances enumerated in the schedules in Sections 20-2-23, 20-2-25, 20-2-27, 20-2-29, or 20-2-31 pursuant to the procedures of the State Board of Health. In making a determination regarding a substance, the State Board of Health shall consider all of the following:

- (1) The actual or relative potential for abuse.
- (2) The scientific evidence of its pharmacological effect, if known.
- (3) The state of current scientific knowledge regarding the substance.
- (4) The history and current pattern of abuse.
- (5) The scope, duration, and significance of abuse.
- (6) The risk to the public health.
- (7) The potential of the substance to produce psychic or physiological dependence liability.
- (8) Whether the substance is an immediate precursor of a substance already

controlled under this chapter.

(b) After considering the factors enumerated in subsection (a), the State Board of Health shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.

(c) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the State Board of Health, the State Board of Health shall similarly control the substance under this chapter after the expiration of 30 days from publication in the federal register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless within that 30-day period, the State Board of Health objects to inclusion, rescheduling, or deletion. In that case, the State Board of Health shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the State Board of Health shall publish its decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this chapter by the State Board of Health, control under this chapter is stayed until the State Board of Health publishes its decision.

(d) Authority to control under this section does not extend to distilled spirits, wine, malt, beverages, or tobacco.

(e) The State Board of Health shall exclude any nonnarcotic substance from a schedule if such substance, under the federal Food, Drug and Cosmetic Act, the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, and the law of this state may be lawfully sold over the counter without a prescription.

(Acts 1971, No. 1407, p. 2378, § 201; Act 2001-971, 3rd Sp. Sess., p. 873, § 2.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2001 amendment, effective September 26, 2001, in subsection (a) inserted "all of"; in subsection (b) deleted "of this section" following "(a)"; deleted subsection (c), redesignated subsections (d) to (f) as subsections (c) to (e); in subsection (e) deleted "may" following "substance", inserted "may"; and made nonsubstantive changes.

ANNOTATIONS

CASENOTES

1. Generally

For discussion of the interplay between subsections (a) and (b) and subsection (d), see *Brown v. State*, 398 So.2d 784 (Ala.Crim.App.1981), writ denied 398 So.2d 787.

In its salient features, subsection (d) adopts the procedures utilized by the federal government in determining a control status. *Ex parte McCurley*, 390 So.2d 25 (Ala.1980), on remand 390 So.2d 31.

2. Constitutionality

This section delegating the authority to the state board of health to add substances to,

or delete substances from the controlled substances list, is constitutional. *Jones v. State*, 495 So.2d 122 (Ala.Crim.App.1986).

Authority of state board of health over schedules of substances controlled by this chapter as not violative of constitution. The authority of the state board of health to add substances to or delete or reschedule substances to be controlled by this chapter has been upheld as not being an unconstitutional delegation of authority. *Reed v. State*, 401 So.2d 131 (Ala.Crim.App.1981), writ denied 401 So.2d 139.

Under authority of *McCurley v. State*, 390 So.2d 15 (Ala. Crim. App.), aff'd in part and rev'd in part on other grounds, 390 So.2d 25 (Ala.1980), subsection (d) of this section is not unconstitutional for lack of due process. *Brown v. State*, 398 So.2d 784 (Ala.Crim.App.1981), writ denied 398 So.2d 787.

Subsections (a) and (b) do not constitute an unconstitutional delegation of legislative power. *Ex parte McCurley*, 390 So.2d 25 (Ala.1980), on remand 390 So.2d 31.

The provisions of subsections (a) and (b) do not offend the provisions of article III, §§ 42 and 43 of the Constitution of Alabama 1901. *Ex parte McCurley*, 390 So.2d 25 (Ala.1980), on remand 390 So.2d 31.

There is no due process violation with the provision in subsection (d), concerning the adoption of federally controlled substances classifications. *McCurley v. State*, 390 So.2d 15 (Ala.Crim.App.1980), affirmed in part, reversed in part 390 So.2d 25, on remand 390 So.2d 31.

3. Purpose

Purpose of section. The legislature wisely enacted this section to enable the state to respond more quickly to the dangers presented by the so-called "designer drugs." *Jones v. State*, 495 So.2d 122 (Ala.Crim.App.1986).

4. Authority of board of health

Legislative and administrative functions. The board determines that the substance should be controlled. Thus it performs its administrative function. But it is the legislative will, not the board's, which states that, following a controlled classification, certain conduct related to that controlled substance constitutes a public offense. *Ex parte McCurley*, 390 So.2d 25 (Ala.1980), on remand 390 So.2d 31.

This section does not delegate the authority to define crimes; rather it is a delegation of authority to find facts or determine the existence or nonexistence of a factual situation or condition on which the operation of a law is made to depend. *McCurley v. State*, 390 So.2d 15 (Ala.Crim.App.1980), affirmed in part, reversed in part 390 So.2d 25, on remand 390 So.2d 31.

Placing of drug methaqualone on controlled substances list by the state board of health was a lawful act not being an unlawful delegation of legislative authority to the state board of health. *Cassell v. State*, 55 Ala.App. 502, 317 So.2d 348 (Ala.Crim.App.1975).

5. Publication

Proper publication. The state board of health properly placed the drug "methaqualone," its salts and derivatives on the list of controlled substances, and this was properly published, as required by law, by publication in a newspaper, or newspapers, of

general circulation in the state. *Cassell v. State*, 55 Ala.App. 502, 317 So.2d 348 (Ala.Crim.App.1975).

6. Judicial notice

Judicial notice of rules and regulations. The court of criminal appeals takes judicial notice of the reasonable rules and regulations of the state board of health, having been duly adopted, which have the force and effect of law. *Cassell v. State*, 55 Ala.App. 502, 317 So.2d 348 (Ala.Crim.App.1975).

7. Hearing

Hearing to determine when substance was added to list. A factual hearing was required on habeas corpus petition to determine when the Alabama board of health added hydrocodone to the list of controlled substances set out in the Code, where the evidence neither proved nor disproved what the law was as to the status of hydrocodone as of the time the offense was committed. *Jones v. State*, 495 So.2d 122 (Ala.Crim.App.1986).

Cited in *Williford v. State*, 365 So.2d 1257 (Ala.Crim.App.1978), cert. denied 365 So.2d 1258 (Ala.); *Isbell v. State*, 390 So.2d 308 (Ala.Crim.App.1980), cert. quashed 390 So.2d 310 (Ala.); *Cockrell v. State*, 392 So.2d 541 (Ala.Crim.App.1980), cert. denied 392 So.2d 545 (Ala.); *Yarbrough v. State*, 405 So.2d 721 (Ala.Crim.App.1981), cert. denied 405 So.2d 725 (Ala.); *Zeigler v. State*, 412 So.2d 308 (Ala.Crim.App.1982), related proceeding 426 So.2d 526 (Ala. Crim. App.) and related proceeding 432 So.2d 542 (Ala. Crim. App.), later proceeding 443 So.2d 1303 (Ala. Crim. App.) and later proceeding 731 F.2d 737 (11th Cir. Ala.), reh'g denied 738 F. 2d 451 (11th Cir. Ala.) and cert. denied 469 U.S. 1042, 83 L. Ed. 2d 416, 105 S. Ct. 529; *Bentley v. State*, 450 So.2d 197 (Ala. Crim. App.1984); *Zeigler v. Alabama*, 731 F.2d 737 (11th Cir. Ala.1984), reh'g denied 738 F. 2d 451 (11th Cir. Ala.) and cert. denied 469 U.S. 1042, 83 L. Ed. 2d 416, 105 S. Ct. 529.

§ 20-2-21. Nomenclature of controlled substances in schedules. [AL ST SEC 20-2-21]

Current through End of 2003 Organizational Session

[Annotations](#)

The controlled substances listed or to be listed in the schedules in Sections 20-2-23, 20-2-25, 20-2-27, 20-2-29 and 20-2-31 are included by whatever official, common, usual, chemical or trade name designated.
(Acts 1971, No. 1407, p. 2378, § 202.)

ANNOTATIONS

CASENOTES

1. Indictment

Description of drug by trade name in indictment. Indictment charging the unlawful sale of "Preludin" charged an offense, despite the fact that the controlled substance was

described by a trade name, rather than as "phenmetrazine," the generic name for the same drug. *McCall v. State*, 487 So.2d 1375 (Ala.Crim.App.1986), certiorari denied 107 S.Ct. 195, 479 U.S. 856, 93 L.Ed.2d 127.

2. Jury instructions

Any substance derived from or chemically reproduced equivalent of coca leaves are subject to this section. Requested instruction that unless jury was convinced by the evidence beyond a reasonable doubt and to a moral certainty that the substances allegedly sold and possessed by the defendant were "L-cocaine" and opposed to "D-cocaine," or that the substances were chemically equivalent or identical to L-cocaine, then it must return a verdict of not guilty was an incorrect statement of law, since this section not only specifically includes within the scope of its prohibition possession of any substance derived from coca leaves, but it also prohibits possession of chemically equivalent substances that are produced "independently by means of chemical synthesis." *Darby v. State*, 516 So.2d 775 (Ala.Crim.App.1985), rev'd on other grounds 516 So.2d 786 (Ala.), on remand 516 So.2d 789 (Ala. Crim. App.); *Ex parte Darby*, 516 So.2d 786 (Ala.1987), on remand 516 So.2d 789 (Ala. Crim. App.).

Cited in *Lipscomb v. Stewart*, 436 F.Supp. 863 (S.D. Ala.1977), rev'd without op. 578 F. 2d 869 (5th Cir. Ala.).

§ 20-2-22. Schedule I -- Standards for compilation. [AL ST SEC 20-2-22]

Current through End of 2003 Organizational Session

Annotations

The State Board of Health shall place a substance in schedule I if it finds that the substance:

- (1) Has high potential for abuse; and
 - (2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.
- (Acts 1971, No. 1407, p. 2378, § 203.)

ANNOTATIONS

CASENOTES

1. Classification of marihuana

Classification of marihuana is properly within authority of state board of health. *Isbell v. State*, 428 So.2d 215 (Ala.Crim.App.1983).

Marihuana is properly classified with "hard" narcotic drugs. *Isbell v. State*, 428 So.2d 215 (Ala.Crim.App.1983).

Generally, classification of marihuana as a narcotic drug has been upheld. *Isbell v. State*, 428 So.2d 215 (Ala.Crim.App.1983).

2. -- Safety and medical use

Marihuana lacks safety and has no accepted medical use. The stated purposes of the Controlled Substances Therapeutic Research Act, § 20-2-110 et seq., reveal that marihuana lacks accepted safety and has no accepted medical use. *Isbell v. State*, 428 So.2d 215 (Ala.Crim.App.1983).

Although useful in treatment of some conditions. While marihuana may be useful in the treatment of some medical conditions it has not achieved accepted medical use or safety in its prescription and application. *Isbell v. State*, 428 So.2d 215 (Ala.Crim.App.1983).

§ 20-2-23. Schedule I -- Listing of controlled substances. [AL ST SEC 20-2-23]

Current through End of 2003 Organizational Session

Annotations

The controlled substances listed in this section are included in schedule I:

(1) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- a. Acetylmethadol;
- b. Allylprodine;
- c. Alphacetylmethadol;
- d. Alphameprodine;
- e. Alphamethadol;
- f. Benzethidine;
- g. Betacetylmethadol;
- h. Betameprodine;
- i. Betamethadol;
- j. Betaprodine;
- k. Clonitazene;
- l. Dextromoramide;
- m. Dextrorphan;
- n. Diampromide;
- o. Diethylthiambutene;
- p. Dimenoxadol;
- q. Dimepheptanol;
- r. Dimethylthiambutene;
- s. Dioxaphetyl butyrate;
- t. Dipipanone;
- u. Ethylmethylthiambutene;
- v. Etonitazene;
- w. Etoxidine;
- x. Furethidine;
- y. Hydroxypethidine;
- z. Ketobemidone;
- aa. Levomoramide;

- bb. Levophenacymorphan;
- cc. Morpheridine;
- dd. Noracymethadol;
- ee. Norlevorphanol;
- ff. Normethadone;
- gg. Norpipanone;
- hh. Phenadoxone;
- ii. Phenampromide;
- jj. Phenomorphan;
- kk. Phenoperidine;
- ll. Piritramide;
- mm. Proheptazine;
- nn. Properidine;
- oo. Racemoramide;
- pp. Trimeperidine.

(2) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- a. Acetorphine;
- b. Acetyldihydrocodeine;
- c. Benzylmorphine;
- d. Codeine methylbromide;
- e. Codeine-N-Oxide;
- f. Cyprenorphine;
- g. Desomorphine;
- h. Dihydromorphine;
- i. Etorphine;
- j. Heroin;
- k. Hydromorphenol;
- l. Methyldesorphine;
- m. Methyldihydromorphine;
- n. Morphine methylbromide;
- o. Morphine methylsulfonate;
- p. Morphine-N-Oxide;
- q. Myorphine;
- r. Nicocodeine;
- s. Nicomorphine;
- t. Normorphine;
- u. Pholcodine;
- v. Thebacon.

(3) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- a. 3,4-methylenedioxy amphetamine;
- b. 5-methoxy-3,4-methylenedioxy amphetamine;

- c. 3,4,5-trimethoxy amphetamine;
 - d. Bufotenine;
 - e. Diethyltryptamine;
 - f. Dimethyltryptamine;
 - g. 4-methyl-2,5-dimethoxy amphetamine;
 - h. Ibogaine;
 - i. Lysergic acid diethylamide;
 - j. Marihuana;
 - k. Mescaline;
 - l. Peyote;
 - m. N-ethyl-3-piperidyl benzilate;
 - n. N-methyl-3-piperidyl benzilate;
 - o. Psilocybin;
 - p. Psilocyn;
 - q. Tetrahydrocannabinols.
- (Acts 1971, No. 1407, p. 2378, § 204.)

ANNOTATIONS

CASENOTES

1. "Marihuana"

"Marijuana" contains "tetrahydrocannabinol (THC)." *Sharpe v. State*, 384 So.2d 633 (Ala.Crim.App.1980).

2. Reasonableness of marihuana classification

Marijuana is properly classified with "hard" narcotic drugs. *Isbell v. State*, 428 So.2d 215 (Ala.Crim.App.1983).

Generally, classification of marihuana as a narcotic drug has been upheld. *Isbell v. State*, 428 So.2d 215 (Ala.Crim.App.1983).

Legislature could include marihuana with so-called "hard drugs," and such classification is reasonable. *Reynolds v. State*, 56 Ala.App. 509, 323 So.2d 394 (Ala.Crim.App.1975), certiorari denied 295 Ala. 415, 323 So.2d 404.

Unless the inclusion of marihuana with other drugs is so arbitrary or unreasonable in that it is not related to a rational public purpose, there is no denial of equal protection under the fourteenth amendment to the United States Constitution. *Warren v. State*, 52 Ala.App. 35, 288 So.2d 817 (Ala.Crim.App.1973), reversed 292 Ala. 71, 288 So.2d 826, on remand 52 Ala.App. 708, 288 So.2d 832.

Determining whether a statutory classification of marihuana with other drugs is valid when placed in juxtaposition with the requirements of equal protection of our state and federal Constitutions requires that the statute be clothed with a presumption of constitutional validity. *Warren v. State*, 52 Ala.App. 35, 288 So.2d 817 (Ala.Crim.App.1973), reversed 292 Ala. 71, 288 So.2d 826, on remand 52 Ala.App. 708, 288 So.2d 832.

In the absence of conclusive evidence that the legislative judgment was devoid of any rational basis, a finding of unconstitutionality is unwarranted, for few rules of law are

more soundly bottomed than that which proscribes judicial interference with legislative discretion. *Warren v. State*, 52 Ala.App. 35, 288 So.2d 817 (Ala.Crim.App.1973), reversed 292 Ala. 71, 288 So.2d 826, on remand 52 Ala.App. 708, 288 So.2d 832.

Marihuana classification reasonable. Whether the cannabis chemistry is psychogenetic or physical in its effects, the legislative determination and grouping of marihuana with the so-called hard drugs is reasonable within decided principles of constitutional law. *Kenny v. State*, 51 Ala.App. 35, 282 So.2d 387 (Ala.Crim.App.1973), certiorari denied 291 Ala. 786, 282 So.2d 392.

3. Possession of marihuana as separate offense

Intent of legislature. Although marihuana is a controlled substance enumerated in Schedule I of this section and would therefore fall within the general possession proscription of § 13A-12-212, it is clear that the legislature intended to create a separate, specific offense for possession of marihuana; if possession of marihuana were to be included within § 13A-12-212, then §§ 13A-12-213 and 13A-12-214 would serve no purpose. *Pool v. State*, 570 So.2d 1260 (Ala.Crim.App.1990), affirmed 570 So.2d 1263.

4. Jury instructions

Not required to charge attempt if no inference drawn. Although offense of an attempt to violate the Alabama Uniform Controlled Substances Act was included in the indictment for selling, furnishing or giving away marihuana, where there was no evidence from which an inference could be drawn that the appellant attempted to give away the marihuana, but failed, trial court did not err in refusing to charge the jury on the law of an attempt to violate the Alabama Uniform Controlled Substances Act. *Ard v. State*, 358 So.2d 792 (Ala.Crim.App.1978), certiorari denied 358 So.2d 794.

5. Sufficiency of evidence

Where the substance alleged to have been sold, furnished or given away was spelled "marijuana" in the indictment as distinguished from "marihuana" as it is found in the Alabama Uniform Controlled Substances Act (§ 20-2-23(3)(j)), the corpus delicti was proved by evidence showing that "marijuana" had been sold without any evidence showing that it contained "tetrahydrocannabinol" since it has been held that "marijuana" contains "tetrahydrocannabinol." *Sharpe v. State*, 384 So.2d 633 (Ala.Crim.App.1980).

Conviction for attempting to obtain paregoric by fraud and false pretenses was supported by evidence even though state failed to prove that paregoric contained morphine-N-oxide, a controlled substance under this section. *Moseley v. State*, 53 Ala.App. 272, 299 So.2d 317 (Ala.Crim.App.1974), certiorari denied 292 Ala. 743, 299 So.2d 319.

Cited in *Miller v. State*, 52 Ala.App. 525, 294 So.2d 774 (Crim. App. 1974); *Brummitt v. State*, 52 Ala.App. 600, 296 So.2d 192 (Crim. App. 1974); *Turner v. State*, 53 Ala.App. 114, 298 So.2d 45 (Crim. App. 1974); *Nesbitt v. State*, 55 Ala.App. 534, 317 So.2d 501 (Crim. App. 1975), cert. denied 294 Ala. 766, 317 So.2d 504 and appeal after remand 343 So.2d 1240 (Ala. Crim. App.), cert. denied 343 So.2d 1243 (Ala.) *Hill v. State*, 56 Ala.App. 369, 321 So.2d 708 (Crim. App. 1975), cert. denied 295 Ala. 405, 321 So.2d 713; *Burns v. State*, 57 Ala.App. 281, 327 So.2d 920 (Crim. App. 1975), cert. denied 295 Ala. 423, 327 So.2d 927; *Page v. State*, 57 Ala.App. 265, 327 So.2d 760

(Crim. App. 1976); Wilcox v. State, 333 So.2d 202 (Ala. Crim. App.1976); Peavy v. State, 336 So.2d 199 (Ala.Crim.App.1976), cert. denied 336 So.2d 202 (Ala.); Hart v. State, 337 So.2d 111 (Ala. Crim. App.1976); Hagendorfer v. State, 348 So.2d 1097 (Ala.Crim.App.1977), cert. denied 348 So.2d 1101 (Ala.) and cert. denied 434 U.S. 1046, 54 L. Ed. 2d 797, 98 S. Ct. 891; Williams v. State, 356 So.2d 216 (Ala.Crim.App.1977), cert. quashed 356 So.2d 219 (Ala.); McBride v. State, 355 So.2d 750 (Ala. Crim. App.1978); Floyd v. State, 375 So.2d 277 (Ala.Crim.App.1978), cert. quashed 375 So.2d 280 (Ala.), cert. denied 444 U.S. 1079, 62 L. Ed. 2d 762, 100 S. Ct. 1030; Sharpe v. State, 384 So.2d 633 (Ala. Crim. App.1980); Roden v. State, 384 So.2d 1248 (Ala. Crim. App.1980); Brown v. State, 392 So.2d 1248 (Ala.Crim.App.1980), cert. denied 392 So.2d 1266(Ala.); Ringer v. State, 394 So.2d 69 (Ala.Crim.App.1980), cert. denied 394 So.2d 72 (Ala.) and appeal after remand 394 So.2d 1248(Ala. Crim. App.); Smith v. State, 435 So.2d 185 (Ala.Crim.App.1983), subsequent appeal 435 So.2d 221 (Ala. Crim. App.).

§ 20-2-24. Schedule II -- Standards for compilation. [AL ST SEC 20-2-24]

Current through End of 2003 Organizational Session

[Annotations](#)

The State Board of Health shall place a substance in schedule II if it finds that:

- (1) The substance has high potential for abuse;
- (2) The substance has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and
- (3) The abuse of the substance may lead to severe psychic or physical dependence.

(Acts 1971, No. 1407, p. 2378, § 205.)

ANNOTATIONS

CASENOTES

1. In general

Drug "methaqualone," etc., properly placed on list. The state board of health properly placed the drug "methaqualone," its salts and derivatives on the list of controlled substances, and this was properly published, as required by law, by publication in a newspaper, or newspapers, of general circulation in the state. Cassell v. State, 55 Ala.App. 502, 317 So.2d 348 (Ala.Crim.App.1975).

Cited in Isbell v. State, 390 So.2d 308 (Ala.Crim.App.1980), cert. quashed 390 So.2d 310 (Ala.).

§ 20-2-25. Schedule II -- Listing of controlled substances. [AL ST SEC 20-2-25]

Current through End of 2003 Organizational Session

[Annotations](#)

The controlled substances listed in this section are included in schedule II:

(1) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by combination of extraction and chemical synthesis:

a. Opium and opiate and any salt, compound, derivative or preparation of opium or opiate.

b. Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph a, but not including the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(2) Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

a. Alphaprodine;

b. Anileridine;

c. Bezitramide;

d. Dihydrocodeine;

e. Diphenoxylate;

f. Fentanyl;

g. Isomethadone;

h. Levomethorphan;

i. Levorphanol;

j. Metazocine;

k. Methadone;

l. Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

m. Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

n. Pethidine;

o. Pethidine -- Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

p. Pethidine -- Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

q. Pethidine -- Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

r. Phenazocine;

s. Piminodine;

t. Racemethorphan;

u. Racemorphan.

(Acts 1971, No. 1407, p. 2378, § 206.)

ANNOTATIONS

CASENOTES

Cited in *Felder v. State*, 420 So.2d 851 (Ala.Crim.App.1982).

§ 20-2-26. Schedule III -- Standards for compilation. [AL ST SEC 20-2-26]

Current through End of 2003 Organizational Session

The State Board of Health shall place a substance in Schedule III if it finds that:

- (1) The substance has a potential for abuse less than the substances listed in Schedules I and II;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(Acts 1971, No. 1407, p. 2378, § 207.)

§ 20-2-27. Schedule III -- Listing of controlled substances. [AL ST SEC 20-2-27]

Current through End of 2003 Organizational Session

Annotations

- (a) The controlled substances listed in this section are included in schedule III:
 - (1) Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
 - a. Amphetamine, its salts, optical isomers and salts of its optical isomers;
 - b. Phenmetrazine and its salts;
 - c. Any substance which contains any quantity of methamphetamine, including its salts, isomers and salts of isomers;
 - d. Methylphenidate.
 - (2) Unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:
 - a. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;
 - b. Chlorhexadol;
 - c. Glutethimide;
 - d. Lysergic acid;
 - e. Lysergic acid amide;
 - f. Methyprylon;
 - g. Phencyclidine;
 - h. Sulfondiethylmethane;
 - i. Sulfonethylmethane;
 - j. Sulfonmethane.
 - (3) Nalorphine.
 - (4) Any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof:
 - a. Not more than 1.8 grams of codeine or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of

an isoquinoline alkaloid of opium;

b. Not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

c. Not more than 300 milligrams of dihydrocodeinone or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

d. Not more than 300 milligrams of dihydrocodeinone or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

e. Not more than 1.8 grams of dihydrocodeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

f. Not more than 300 milligrams of ethylmorphine or any of its salts per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

g. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

h. Not more than 50 milligrams of morphine or any of its salts per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(b) The State Board of Health may except by rule any compound, mixture or preparation containing any stimulant or depressant substance listed in subdivisions (1) and (2) of subsection (a) of this section from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(Acts 1971, No. 1407, p. 2378, § 208.)

ANNOTATIONS

CASENOTES

1. Scienter

Scienter is an essential element of crime of attempt to obtain or obtaining a controlled substance by fraud. *Walker v. State*, 358 So.2d 800 (Ala.Crim.App.1978).

2. Indictment

Original prosecution not abandoned where defendant reindicted so as to provide more specific notice. Reindictment of defendant in 1984 for the sale of "phenmetrazine" was not an abandonment by the state of its original prosecution in 1981 for the sale of "Preludin", especially since the purpose of the attempted reindictment was merely to provide the defendant with more particular and specific notice of the original charge.

McCall v. State, 487 So.2d 1375 (Ala.Crim.App.1986), certiorari denied 107 S.Ct. 195, 479 U.S. 856, 93 L.Ed.2d 127.

Description of drug by trade name in indictment. Indictment charging the unlawful sale of "Preludin" charged an offense, despite the fact that the controlled substance was described by a trade name, rather than as "phenmetrazine," the generic name for the same drug. McCall v. State, 487 So.2d 1375 (Ala.Crim.App.1986), certiorari denied 107 S.Ct. 195, 479 U.S. 856, 93 L.Ed.2d 127.

Cited in Phillips v. State, 52 Ala.App. 297, 291 So.2d 751 (Crim. App. 1973); Waldrup v. State, 52 Ala.App. 292, 291 So.2d 383 (Crim. App. 1974), cert. denied 292 Ala. 756, 293 So.2d 828; Reeves v. State, 54 Ala.App. 108, 305 So.2d 383 (Crim. App. 1974), cert. denied 293 Ala. 772, 305 So.2d 385; Brock v. State, 54 Ala.App. 310, 307 So.2d 707 (Crim. App. 1975); Kittle v. State, 362 So.2d 1271 (Ala.1978); Hare v. State, 390 So.2d 1126 (Ala.Crim.App.1980), cert. denied 390 So.2d 1129 (Ala.); Williams v. State, 429 So.2d 625 (Ala. Crim. App.1982); Grace v. State, 445 So.2d 976 (Ala.Crim.App.1983).

§ 20-2-28. Schedule IV -- Standards for compilation. [AL ST SEC 20-2-28]

Current through End of 2003 Organizational Session

The State Board of Health shall place a substance in schedule IV if it finds that:

- (1) The substance has a low potential for abuse relative to substances in schedule III;
 - (2) The substance has currently accepted medical use in treatment in the United States; and
 - (3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule III.
- (Acts 1971, No. 1407, p. 2378, § 209.)

§ 20-2-29. Schedule IV -- Listing of controlled substances. [AL ST SEC 20-2-29]

Current through End of 2003 Organizational Session

Annotations

- (a) The controlled substances listed in this section are included in schedule IV:
 - (1) Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:
 - a. Barbitol;
 - b. Chloral betaine;
 - c. Chloral hydrate;
 - d. Ethchlorvynol;
 - e. Ethinamate;
 - f. Methohexital;
 - g. Meprobamate;
 - h. Methylphenobarbital;

- i. Paraldehyde;
- j. Petrichloral;
- k. Phenobarbital.

(b) The state board of health may except by rule any compound, mixture or preparation containing any depressant substance listed in subsection (a) from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.
(Acts 1971, No. 1407, p. 2378, § 210.)

ANNOTATIONS

CASENOTES

Cited in Jones v. State, 348 So.2d 1116 (Ala.Crim.App.1977), cert. denied 348 So.2d 1120 (Ala.); Zierer v. State, 355 So.2d 740 (Ala. Crim. App.1978); Reed v. State, 368 So.2d 326 (Ala. Crim. App.1979); Isbell v. State, 390 So.2d 308 (Ala.Crim.App.1980), cert. quashed 390 So.2d 310 (Ala.).

§ 20-2-30. Schedule V -- Standards for compilation. [AL ST SEC 20-2-30]

Current through End of 2003 Organizational Session

The State Board of Health shall place a substance in schedule V if it finds that:

- (1) The substance has low potential for abuse relative to the controlled substances listed in schedule IV;
- (2) The substance has currently accepted medical use in treatment in the United States; and
- (3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV.

(Acts 1971, No. 1407, p. 2378, § 211.)

§ 20-2-31. Schedule V -- Listing of controlled substances. [AL ST SEC 20-2-31]

Current through End of 2003 Organizational Session

Annotations

The controlled substances listed in this section are included in schedule V:

- (1) Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- a. Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams;

- b. Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams;
 - c. Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams;
 - d. Not more than 2.5 milligrams of diphenozylate and not less than 25 micrograms of atropine sulfate per dosage unit;
 - e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
- (Acts 1971, No. 1407, p. 2378, § 212.)

ANNOTATIONS

CASENOTES

Cited in *Arnold v. State*, 340 So.2d 873 (Ala. Crim. App.1976), cert. denied 340 So.2d 877 (Ala.).

§ 20-2-32. Revision and republication of schedules. [AL ST SEC 20-2-32]

Current through End of 2003 Organizational Session

Annotations

The State Board of Health shall revise and republish the schedules annually.
(Acts 1971, No. 1407, p. 2378, § 213.)

ANNOTATIONS

CASENOTES

1. In general

Drug "methaqualone," etc., properly placed on list and published. The state board of health properly placed the drug "methaqualone," its salts and derivatives on the list of controlled substances, and this was properly published, as required by law, by publication in a newspaper, or newspapers, of general circulation in the state. *Cassell v. State*, 55 Ala.App. 502, 317 So.2d 348 (Ala.Crim.App.1975).

Cited in *Isbell v. State*, 390 So.2d 308 (Ala.Crim.App.1980), cert. quashed 390 So.2d 310 (Ala.).

ARTICLE 3. REGULATION OF MANUFACTURE AND DISTRIBUTION.

REFERENCES

ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-4-.01 et seq., Board of Medical Examiners; Controlled Substances Certificates.

RESEARCH REFERENCES

Am Jur Pleading and Practice Forms:

9 Am. Jur. Pl. & Pr. Forms, Drugs, Narcotics, and Poisons, § 11 et seq.

Corpus Juris Secundum:

28 CJS, Drugs & Narcotics §§ 27, 28.

ANNOTATIONS

CASENOTES

Cited in Jones v. State, 432 So.2d 19 (Ala.Crim.App.1983).

§ 20-2-50. Certifying boards to promulgate rules and charge reasonable fees for registration and administration of provisions relating to manufacture, etc., of controlled substances; disposition of fees collected. [AL ST SEC 20-2-50]

Current through End of 2003 Organizational Session

References

(a) The certifying boards shall promulgate rules and charge reasonable fees to defray expenses incurred in registration and administration of the provisions of this article in regard to the manufacture, dispensing or distribution of controlled substances within the state.

(b) The fees collected to defray expenses shall be retained by the certifying boards. (Acts 1971, No. 1407, p. 2378, § 301; Acts 1976, No. 699, p. 965, § 2.)

REFERENCES

RESEARCH REFERENCES

Annotations:

Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury. 94 A.L.R.3d 1080.

§ 20-2-51. Registration of persons manufacturing, distributing or dispensing controlled substances -- General requirements. [AL ST SEC 20-2-51]

Current through End of 2003 Organizational Session

References Annotations

(a) Every person who manufactures, distributes or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state must obtain annually a registration issued by the certifying boards in accordance with its rules.

(b) Persons registered by the certifying boards under this chapter to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled

substances under this article:

(1) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouseman or an employee thereof whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(d) The certifying boards may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if they find it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes or dispenses controlled substances.

(f) The certifying boards may inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by them.

(Acts 1971, No. 1407, p. 2378, § 302.)

REFERENCES

RESEARCH REFERENCES

Corpus Juris Secundum:

28 CJS, Drugs & Narcotics §§ 107, 108.

ANNOTATIONS

CASENOTES

1. Burden of proving exception

State not required to prove defendant not within exception. Although this section provides an "exceptions" provision concerning who may lawfully dispense drugs under this chapter, the exceptions provision is not a part of the penalty clause itself. Thus negating the "matter of exception" is only necessary where the exception defining the crime is set forth in the enacting clause. *Warren v. State*, 52 Ala.App. 35, 288 So.2d 817 (Ala.Crim.App.1973), reversed 292 Ala. 71, 288 So.2d 826, on remand 52 Ala.App. 708, 288 So.2d 832.

2. Possession pursuant to lawful order

Possession pursuant to lawful order not violation. Possession of a controlled substance by an ultimate user or person in possession of a controlled substance pursuant to a lawful order of a practitioner does not constitute a violation of the Controlled Substances Act. *Walker v. State*, 358 So.2d 800 (Ala.Crim.App.1978).

Cited in *Cassell v. State*, 55 Ala.App. 502, 317 So.2d 348 (Crim. App. 1975); *Toles v. State*, 416 So.2d 768 (Ala.Crim.App.1982).

§ 20-2-52. Registration of persons manufacturing, distributing or dispensing controlled substances -- Standards; requirements as to practitioners conducting research; effect of federal registration. [AL ST SEC 20-2-52]

Current through End of 2003 Organizational Session

References

(a) The certifying boards shall register only an applicant certified by their respective boards to manufacture, dispense or distribute controlled substances enumerated in Schedules I, II, III, IV and V; provided, that the State Board of Pharmacy shall register all manufacturers and wholesalers unless they determine that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the above-mentioned boards shall consider the following factors:

(1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;

(2) Compliance with applicable state and local law;

(3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;

(4) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

(5) Furnishing by the applicant of false or fraudulent material in any application filed under this article;

(6) Suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and

(7) Any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The State Board of Health need not require separate registration under this article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this article in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the State Board of Health evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this article.

(Acts 1971, No. 1407, p. 2378, § 303; Acts 1976, No. 699, p. 965, § 3.)

REFERENCES

CROSS REFERENCES

For Controlled Substances Therapeutic Research Act, see § 20-2-110 et seq.

ADMINISTRATIVE CODE

RESEARCH REFERENCES

Annotations:

Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury. 94 A.L.R.3d 1080.

§ 20-2-53. Registration of persons manufacturing, distributing or dispensing controlled substances -- Order to show cause; proceedings; review; issuance of stay. [AL ST SEC 20-2-53]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#) [Annotations](#)

(a) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the certifying boards shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the certifying board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with the Alabama Administrative Procedure Act and the procedures established by the respective certifying board without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) Anyone adversely affected by any order of a certifying board denying, suspending, or revoking a registration or refusing the renewal of a registration, whether or not such suspension, revocation, or registration is limited, may obtain judicial review thereof by filing a written petition for review with the Circuit Court of Montgomery County in accordance with Section 41-22-20.

(c) The following procedures shall take precedence over subsection (c) of Section 41-22-20 relating to the issuance of a stay of any order of the certifying board suspending, revoking, or restricting a registration. The suspension, revocation, or restriction of a registration shall be given immediate effect, and no stay or supersedeas shall be granted pending judicial review of a decision by the certifying board to suspend, revoke, or restrict a registration unless a reviewing court, upon proof by the party seeking judicial review, finds in writing that the action of the certifying board was taken without statutory authority, was arbitrary or capricious, or constituted a gross abuse of discretion. Notwithstanding any other provision of law to the contrary, any action commenced for the purpose of seeking judicial review of the administrative decisions of a certifying board, including writ of mandamus, or judicial review pursuant to the Alabama Administrative Procedure Act, must be filed, commenced, and maintained in the Circuit Court of Montgomery County, Alabama.

(d) From the judgment of the circuit court, either the certifying board or the affected

party who invoked the review may obtain a review of any final judgement of the circuit court under Section 41-22-21. No security shall be required of the certifying board. (Acts 1971, No. 1407, p. 2378, § 305; Acts 1982, No. 82-492, p. 815, § 2; Act 2002-140, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2002 amendment, effective June 1, 2002, designated subsections (a), (b), and (d) and added subsection (c); in subsection (a) inserted "the Alabama Administrative Procedure Act and"; in subsection (b) substituted "judicial" for "a", substituted "in accordance with the provisions of Section 41-22-20" for "within 30 days after the entry of said order", and deleted the second through sixth sentences; and in subsection (d) substituted "obtain a review of any final judgment of the circuit court under the provisions of Section 41-22-21. No security shall be required of the certifying board." For "appeal directly to the supreme court of Alabama by taking such appeal within 42 days after the date of the making of and entering of its judgment by the circuit court." and deleted the last two sentences.

Code Commissioner's Notes:

Acts 1982, No. 82-492, p. 815, § 1, provides: "That it is the intent of the legislature to provide a mechanism for judicial review of the actions of certifying boards under the Alabama Uniform Controlled Substances Act so that the rights of a registrant are not prejudiced prior to review by the circuit court of Montgomery county." **Section 3 of such act provides that the provisions of the act shall take precedence over the provisions of Chapter 22 of Title 41.**

REFERENCES

CROSS REFERENCES

As to controlled substance registration certificate, see § 34-24-61.

ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-5-.01 et seq., Board of Medical Examiners; Hearings and Appeals.

ANNOTATIONS

CASENOTES

1. Relationship with other laws

This section takes precedence over the provisions of the Administrative Procedure Act, § 41-22-1 et seq. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

2. De novo hearing

Legislative intent to provide de novo hearing. Although this section is somewhat

clumsily phrased, the clear intention of the legislature is to provide for a de novo hearing in its truest sense. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

Right to practice medicine is a property right which may be denied only if the denial is consonant with due process, and due process requires, among other things, a hearing consistent with the essentials of a fair trial, which include holding a de novo hearing when required by law. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

3. Sufficiency of evidence

Evidence held insufficient to support denial of certificate. Order of the Alabama state board of medical examiners denying physician's request for a full and unrestricted Alabama controlled substance certificate, as upheld by the circuit court, would be reversed where the evidence showed that physician had admitted herself to the United States Public Health Hospital in Kentucky for the purpose of treating a narcotics addiction 25 years ago, and that the physician had abnormally high schedule II drug orders during that same period of time, but where the record was completely devoid of any other relevant evidence to support the conclusion that her prescription rights should continue to be restricted 25 years later. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

§ 20-2-54. Registration of persons manufacturing, distributing or dispensing controlled substances -- Revocation or suspension of registration -- Grounds and procedure generally. [AL ST SEC 20-2-54]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#) [Annotations](#)

(a) A registration under Section 20-2-52 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the certifying boards upon a finding that the registrant:

- (1) Has furnished false or fraudulent material information in any application filed under this article;
- (2) Has been convicted of a crime under any state or federal law relating to any controlled substance;
- (3) Has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;
- (4) Has violated the provisions of Chapter 23 of Title 34; or
- (5) Has, in the opinion of the certifying board, excessively dispensed controlled substances for any of his patients.

a. A registrant may be considered to have excessively dispensed controlled substances if his certifying board finds that either the controlled substances were dispensed for no legitimate medical purpose, or that the amount of controlled substances dispensed by the registrant is not reasonably related to the proper medical management of his patient's illnesses or conditions. Drug addiction shall not be considered an illness or condition which would justify continued

dispensing of controlled substances, except in gradually decreasing dosages administered to the patient for the purpose of curing the addiction.

b. A registrant who is a physician licensed to practice medicine in the State of Alabama may be considered to have excessively dispensed controlled substances if he or she prescribes, orders, dispenses, administers, supplies or otherwise distributes any Schedule II amphetamine and/or Schedule II amphetamine-like anorectic drug, and/or Schedule II sympathomimetic amine drug or compound thereof, and/or any salt, compound, isomer, derivative or preparation of the foregoing which are chemically equivalent thereto, and/or other non-narcotic Schedule II stimulant drug, which drugs or compounds are classified under Schedule II of the Alabama Uniform Controlled Substances Act, Section 20-2-24, to any person except for the therapeutic treatment of:

1. Narcolepsy.
2. Hyperkinesis.
3. Brain dysfunction of sufficiently specific diagnosis, or etiology which clearly indicates the need for these substances in treatment or control.
4. Epilepsy.
5. Differential psychiatric evaluation of clinically significant depression provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression.
6. Clinically significant depression shown to be refractory to other therapeutic modalities provided however, that such treatment shall not extend beyond a period of 30 days unless the patient is referred to a licensed practitioner specializing in the treatment of depression;

or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol must be submitted to and reviewed and approved by the State Board of Medical Examiners before the investigation has begun. A physician prescribing, ordering or otherwise distributing the controlled substances listed above in the manner permitted by this subsection shall maintain a complete record which must include documentation of the diagnosis and reason for prescribing, the name, dose, strength, and quantity of the drug, and the date prescribed or distributed. The records required under this subsection shall be made available for inspection by the certifying board or its authorized representative upon request. Those Schedule II stimulant drugs enumerated above shall not be dispensed or prescribed for the treatment or control of exogenous obesity.

(b) The certifying boards may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the certifying boards suspend or revoke a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The certifying boards shall promptly notify the Drug Enforcement Administration of the United States Department of Justice of all orders suspending or revoking registration and all forfeitures of controlled substances.
(Acts 1971, No. 1407, p. 2378, § 304; Acts 1979, No. 79-204, p. 313, § 1; Acts 1983, 4th Ex. Sess., No. 83-890, § 2; Act 2001-971, 3rd Sp. Sess., p. 873, 3rd Sp. Sess., p. 873, § 2.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2001 amendment, effective September 26, 2001, in subsection (d) substituted "Drug Enforcement Administration of the United States Department of Justice" for "bureau".

Code Commissioner's Notes:

Acts 1983, No. 83-890, § 1, provides: "That it is the intent of the legislature to take cognizance of the fact that significant amounts of amphetamines and amphetamine like stimulant drugs, classified under schedule II of the Alabama Uniform Controlled Substances Act, are each year being diverted to illegal use and that such diversion contributes substantially to the problems of illegal drug trafficking in the state of Alabama; further that it is the legislative intent that the utilization of amphetamines and amphetamine like drugs and compounds, including sympathomimetic amine drugs or compounds thereof, and other schedule II nonnarcotic stimulant drugs should be limited to the treatment of those conditions where the safety and effectiveness of the drugs has been clearly demonstrated."

REFERENCES

CROSS REFERENCES

As to assessment of administrative fines for violation of this section, see § 34-24-380.
As to controlled substance registration certificate, see § 34-24-61.

ADMINISTRATIVE CODE

15 Ala. Admin. Code 540-X-5-.01 et seq., Board of Medical Examiners; Hearings and Appeals.

RESEARCH REFERENCES

Annotations:

Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotic or stimulant drugs. 17 A.L.R.3d 1408.

Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient. 99 A.L.R.3d 854.

Corpus Juris Secundum:

28 CJS, Drugs & Narcotics § 109.

ANNOTATIONS

CASENOTES

1. Legitimate medical purpose standard

The "for a legitimate medical purpose" standard is clearly specified in paragraph (a)(5)a. of this section and incorporated by implication into the "except as authorized by this chapter" language of former § 20-2-70(a). *Evers v. State*, 434 So.2d 804 (Ala.Crim.App.1982), reversed 434 So.2d 813, on remand 434 So.2d 817.

2. "Dispensing"

"Dispensing" encompasses "prescribing". As used in subdivision (a)(5) of this section dispensing includes the act of prescribing. Since the broader grouping of selling, furnishing or giving away encompasses the act of dispensing, it, likewise, includes the act of prescribing. *Evers v. State*, 434 So.2d 804 (Ala.Crim.App.1982), reversed 434 So.2d 813, on remand 434 So.2d 817.

3. Sufficiency of evidence

Evidence held insufficient to support denial of certificate. Order of the Alabama state board of medical examiners denying physician's request for a full and unrestricted Alabama controlled substance certificate, as upheld by the circuit court, would be reversed where the evidence showed that physician had admitted herself to the United States Public Health Hospital in Kentucky for the purpose of treating a narcotics addiction 25 years ago, and that the physician had abnormally high schedule II drug orders during that same period of time, but where the record was completely devoid of any other relevant evidence to support the conclusion that her prescription rights should continue to be restricted 25 years later. *Benton v. Alabama Bd. of Medical Examiners*, 467 So.2d 234 (Ala.1985).

§ 20-2-54.1. Rules and regulations. [AL ST SEC 20-2-54.1]

Current through End of 2003 Organizational Session

The certifying boards under the Alabama Uniform Controlled Substances Act, the State Board of Medical Examiners and the Medical Licensure Commission are each authorized to promulgate such rules and regulations as may be required to implement the provisions of this chapter.

(Acts 1983, 4th Ex. Sess., No. 83-890, § 4.)

§ 20-2-55. Registration of persons manufacturing, distributing or dispensing controlled substances -- Revocation or suspension of registration -- Suspension without prior order to show cause. [AL ST SEC 20-2-55]

Current through End of 2003 Organizational Session

The certifying boards may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under Section 20-2-54 or where renewal of registration is refused, if it finds that there is an imminent danger to the public

health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the certifying boards or dissolved by a court of competent jurisdiction. (Acts 1971, No. 1407, p. 2378, § 305.)

§ 20-2-56. Maintenance of records and inventories by registrants generally. [AL ST SEC 20-2-56]

Current through End of 2003 Organizational Session

[Annotations](#)

Persons registered to manufacture, distribute or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules issued by the State Board of Medical Examiners, the State Board of Health or the State Board of Pharmacy.

(Acts 1971, No. 1407, p. 2378, § 306; Acts 1976, No. 699, p. 965, § 4.)

ANNOTATIONS

CASENOTES

Cited in Miller v. State, 54 Ala.App. 230, 307 So.2d 40 (Crim. App. 1974).

§ 20-2-57. Distribution of certain controlled substances by one registrant to another registrant. [AL ST SEC 20-2-57]

Current through End of 2003 Organizational Session

[Annotations](#)

Controlled substances in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

(Acts 1971, No. 1407, p. 2378, § 307.)

ANNOTATIONS

CASENOTES

Cited in Miller v. State, 54 Ala.App. 230, 307 So.2d 40 (Crim. App. 1974).

§ 20-2-58. Dispensing of controlled substances in Schedule II; maintenance of records and inventories by registered pharmacies. [AL ST SEC 20-2-58]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#) [Annotations](#)

(a) A pharmacist may dispense directly a controlled substance in Schedule II only

pursuant to a written prescription signed by the practitioner. Except as provided in subsections (b) and (c), a prescription for a Schedule II controlled substance may be transmitted by the practitioner or the agent of the practitioner to a pharmacy via facsimile equipment, provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance.

(b) A prescription written for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by the practitioner or the agent of the practitioner to the home infusion pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(c) A prescription written for Schedule II substances for a resident of a long term care facility may be transmitted by the practitioner or the agent of the practitioner to the dispensing pharmacy by facsimile. The facsimile shall serve as the original written prescription.

(d) Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for the substances shall be maintained in a separate prescription file.

(2) Inventories and records of controlled substances listed in Schedules III, IV and V shall be maintained either separately from all other records of the pharmacy or in the form that the information required is readily retrievable from ordinary business records of the pharmacy, and prescriptions for the substances shall be maintained either in separate prescription file for controlled substances listed in Schedules III, IV and V only or in the form that they are readily retrievable from the other prescription records of the pharmacy.

(e) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV which is a prescription drug as determined under State Board of Health statute, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(f) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(Acts 1971, No. 1407, p. 2378, § 308; Acts 1995, No. 95-732, p. 1565, § 1; Act 98-617, p. 1358, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1995 amendment, effective August 7, 1995, rewrote former subsection (a); added present subsections (b) and (c); and made nonsubstantive changes.

The 1998 amendment, effective August 1, 1998, in subdivision (d)(2) deleted the last sentence which read: "Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter 'C' no less than one inch high and filed either in the prescription file

for controlled substances listed in Schedules I and II or in the usual consecutively numbered prescription file for noncontrolled substances."

REFERENCES

RESEARCH REFERENCES

Annotations:

State law criminal liability of licensed physician for prescribing or dispensing drug or similar controlled substance. 13 A.L.R.5th 1.

Promotional efforts directed toward prescribing physician as affecting prescription drug manufacturer's liability for product-caused injury. 94 A.L.R.3d 1080.

Corpus Juris Secundum:

28 CJS, Drugs & Narcotics § 107.

ANNOTATIONS

CASENOTES

1. Lesser included offenses

Failure to keep records of prescriptions is lesser included offense of unlawful sale of controlled substances without prescription. The one element separating the two offenses is authorization by a prescribing physician to sell the controlled substance. Ex parte Stephens, 512 So.2d 786 (Ala.1987), on remand 512 So.2d 789.

2. -- Jury instructions

Failure to charge jury of lesser included offense of failure to keep records. In a prosecution for unlawful sale of controlled substances without a prescription, where there was evidence offered which could establish that the pharmacist had oral prescriptions before dispensing the drugs, but failed to properly document them, the trial court erred in refusing to charge the jury on the lesser included offense of failure to keep records of prescriptions. Ex parte Stephens, 512 So.2d 786 (Ala.1987), on remand 512 So.2d 789.

Cited in Miller v. State, 54 Ala.App. 230, 307 So.2d 40 (Crim. App. 1974); Chesteen v. State, 365 So.2d 102 (Ala.Crim.App.1978), cert. quashed 365 So.2d 108 (Ala.).

ARTICLE 4. OFFENSES AND PENALTIES.

HISTORICAL NOTES

HISTORY

Code Commissioner's Notes:

Acts 1987, No. 87-603, which amended §§ 20-2-71 through 20-2-74, repealed §§ 20-2-70, 20-2-76 and 20-2-77, and enacted §§ 13A-12-210 through 13A-12-215, provides in § 11: "The provisions of this act are to be included in the Code of Alabama 1975, as a part of Title 13A, "Alabama Criminal Code", and all provisions of Title 13A, including the Habitual Felony Offender Act, are applicable thereto; provided that

any of the provisions of this act may also be included in Title 20."

REFERENCES

CROSS REFERENCES

As to drug trafficking offenses, see §§ 13A-12-230 through 13A-12-232.

As to sale of drugs on or near school campus, see § 13A-12-250.

As to drug paraphernalia offenses, see § 13A-12-260.

As to sale of drugs at or near housing project, see § 13A-12-270.

As to inchoate drug offenses, see §§ 13A-12-201 through 13A-12-205.

As to drug possession and sale offenses, see §§ 13A-12-210 through 13A-12-216.

ANNOTATIONS

CASENOTES

1. Generally

Trial court was required to consider defendant's prior drug conviction for enhancement purposes when sentencing defendant for sexual abuse in the first degree under Habitual Felony Offender Act, though drug conviction occurred before enactment of amendment to Drug Crimes Act that repealed recidivist provision within Controlled Substances Act for conduct occurring after its effective date and made drug-related crimes subject to Habitual Felony Offender Act, where conduct giving rise to conviction for sexual abuse in first degree occurred after effective date of amendment to Drug Crimes Act. *Estes v. State*, 776 So.2d 206 (Ala.Crim.App.1999).

Sentence for possession of controlled substance was properly enhanced pursuant to Habitual Felony Offender Act, rather than pursuant to Controlled Substances Act, where conduct giving rise to conviction occurred after effective date of Drug Crimes Amendments Act that repealed recidivist provision of Controlled Substances Act. *Burton v. State*, 728 So.2d 1142 (Ala.Crim.App.1997), opinion after remand, rehearing denied.

In forfeiture proceeding, state may establish prima facie case by showing that item to be forfeited was used, or was intended to be used, in violation of Uniform Controlled Substances Act. *McCloud v. State*, 715 So.2d 230 (Ala.Civ.App.1998), rehearing denied, certiorari denied.

Defendant who was convicted of felony drug offense prior to Oct. 21, 1987, was entitled to relief from sentence which had been imposed under Habitual Felony Offender Act (HFOA); prior to that date, HFOA was not applicable to drug offenses. *Dobbins v. State*, 716 So.2d 231 (Ala.Crim.App.1997), opinion after remand, rehearing denied.

§ 20-2-70. Prohibited acts A. Repealed by Acts 1987, No. 87-603, p. 1047, § 12, effective October 21, 1987. [AL ST SEC 20-2-70]

Current through End of 2003 Organizational Session

§ 20-2-71. Prohibited acts B. [AL ST SEC 20-2-71]

(a) It is unlawful for any person:

(1) Who is subject to Article 3 of this chapter to distribute or dispense a controlled substance in violation of Section 20-2-58;

(2) Who is a registrant to manufacture a controlled substance not authorized by his registration or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter; provided, however, that upon the first conviction of a violator under this provision said violator shall be guilty of a Class A misdemeanor. Subsequent convictions shall subject the violator to the felony penalty provision set forth in subsection (b) of this section.

(4) To refuse an entry into any premises for any inspection authorized by this chapter; or

(5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances or which is used for keeping or selling them in violation of this chapter.

(b) Any person who violates this section is guilty of a Class B felony.

(Acts 1971, No. 1407, p. 2378, § 402; Acts 1987, No. 87-603, p. 1047, § 6.)

REFERENCES

RESEARCH REFERENCES

Annotations:

Consumption or destruction of physical evidence due to testing or analysis by prosecution's expert as warranting suppression of evidence or dismissal of case against accused in state court. 40 A.L.R.4th 594.

ANNOTATIONS

CASENOTES

1. Knowledge

Knowledge by accused of presence of controlled substances is essential element and prerequisite to conviction for offense of illegal possession of controlled substance under Controlled Substances Act; such knowledge may be, and usually is, established by circumstantial evidence. *Bright v. State*, 673 So.2d 851 (Ala.Crim.App.1995).

2. Lesser included offenses

Failure to keep records of prescriptions is lesser included offense of unlawful sale of controlled substances without prescription. The one element separating the two offenses is authorization by a prescribing physician to sell the controlled substance. *Ex parte Stephens*, 512 So.2d 786 (Ala.1987), on remand 512 So.2d 789.

3. -- Jury instructions

Failure to charge jury on lesser included offense. In prosecution for unlawful sale of controlled substances without a prescription, where there was evidence offered which could establish that the pharmacist had oral prescriptions before dispensing the drugs, but failed to properly document them, the trial court erred in refusing to charge jury on lesser included offense of failure to keep records of prescriptions. *Ex parte Stephens*, 512 So.2d 786 (Ala.1987), on remand 512 So.2d 789.

4. Evidence

Evidence sufficient to raise question of fact for jury. Where the residence in which the drugs were found was that of the defendant, his wife and child, and no one else lived there, two officers testified that they saw the defendant grab up some trash and start out the door with same, one officer testified he heard a "whirring" or "fluttering" sound and saw the defendant's arm make a motion, then heard a "thud" of something which apparently struck the roof just outside, three officers stated they saw a brown paper bag sitting on top of the roof in the rain, and when it was retrieved it was damp on top, but the bottom was dry, and all of the controlled substances were inside the brown paper bag which the officers saw on the roof of the defendant's porch, and this was immediately after the defendant went outside to throw out some trash; such evidence raised a question of fact for the jury as to defendant's knowledge of the presence of the controlled substances at his residence and was sufficient to sustain his conviction. *Green v. State*, 384 So.2d 1215 (Ala.Crim.App.1980).

5. -- Admissibility

Where one or more controlled substances were contained within the same bag or pouch, such were relevant evidence as being part of the same transaction, and such items were properly admitted as showing the "complete story" as to the various drugs and paraphernalia found at the home. *Green v. State*, 384 So.2d 1215 (Ala.Crim.App.1980).

Cited in *Hill v. State*, 348 So.2d 848 (Ala.Crim.App.1977), cert. denied 348 So.2d 857 (Ala.); *Chesteen v. State*, 365 So.2d 102 (Ala.Crim.App.1978), cert. quashed 365 So.2d 108 (Ala.).

§ 20-2-72. Prohibited acts C. [AL ST SEC 20-2-72]

Current through End of 2003 Organizational Session

[References](#) [Annotations](#)

(a) It is unlawful for any person:

(1) To distribute as a registrant a controlled substance classified in schedules I or II, except pursuant to an order form as required by Section 20-2-57;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person;

(3) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(4) To furnish false or fraudulent material information in or omit any material information from any application, report or other document required to be kept or filed under this chapter or any record required to be kept by this chapter; or

(5) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a Class B felony, except that any person who violates subdivision (a)(3) of this section is guilty of a Class C felony.
(Acts 1971, No. 1407, p. 2378, § 403; Acts 1987, No. 87-603, p. 1047, § 7.)

REFERENCES

RESEARCH REFERENCES

Annotations:

Consumption or destruction of physical evidence due to testing or analysis by prosecution's expert as warranting suppression of evidence or dismissal of case against accused in state court. 40 A.L.R.4th 594.

ANNOTATIONS

CASENOTES

Cited in Hill v. State, 348 So.2d 848 (Ala.Crim.App.1977), cert. denied 348 So.2d 857 (Ala.).

§ 20-2-73. Transferred to § 13A-12-215 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. [AL ST SEC 20-2-73]

Current through End of 2003 Organizational Session

§ 20-2-74. Prescription, administration, etc., of controlled substances by practitioners of veterinary medicine for use of human beings or by practitioners of dentistry for persons not under treatment in regular practice of profession. [AL ST SEC 20-2-74]

Current through End of 2003 Organizational Session

[References](#) [Annotations](#)

(a) It shall be unlawful for any practitioner of dentistry to prescribe, administer or dispense any controlled substance enumerated in schedules I through V for any person not under his treatment in his regular practice of his profession or for any practitioner of veterinary medicine to prescribe, administer or dispense any controlled substance enumerated in schedules I through V for the use of human beings; provided, however, that the provisions of this section shall be construed not to prevent any lawfully authorized practitioner of medicine from furnishing or prescribing in good faith for the use of any habitual user of substances enumerated in schedules I through V who is under

his professional care such substances as he may deem necessary for their treatment, when such prescriptions are not given or substances furnished for the purpose of maintaining addiction or abuse.

(b) Any person who violates this section shall be guilty of a Class B felony. (Acts 1971, No. 1407, p. 2378, § 505; Acts 1987, No. 87-603, p. 1047, § 9.)

REFERENCES

RESEARCH REFERENCES

Annotations:

Physician's liability to third person for prescribing drug to known drug addict. 42 A.L.R.4th 586.

ANNOTATIONS

CASENOTES

1. Constitutionality

This section is constitutional. Statute which in its simplest form states that it is unlawful for dentist to prescribe certain drugs to person not his patient or for veterinarian to prescribe certain drugs for human use is constitutional in its application to those persons coming within its purview, dentist and veterinarians, but attempt by state to enforce it against licensed physician, to whom it did not apply, was unconstitutional. *State v. Bradford*, 368 So.2d 317 (Ala.Crim.App.1979).

2. Applicability

Does not apply to licensed physicians. Statute which states that it shall be unlawful for a dentist to prescribe certain drugs to a person not his patient, or for veterinarian to prescribe certain drugs for human use, and which nowhere states that it shall be unlawful for a practitioner of medicine to do anything, although limitation adding that it shall be construed not to prevent any lawfully authorized practitioner of medicine from furnishing or prescribing in good faith for the use of any habitual user such substances as are deemed necessary for user's treatment does not apply to physicians, regardless of whether or not they act in good faith. *State v. Bradford*, 368 So.2d 317 (Ala.Crim.App.1979).

Cited in *Bentley v. State*, 450 So.2d 197 (Ala.Crim.App.1984).

§ 20-2-75. Repealed by Acts 1986, No. 86-425, § 4, effective April 29, 1986. [AL ST SEC 20-2-75]

Current through End of 2003 Organizational Session

§ 20-2-75.1. Transferred to § 13A-12-260 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. [AL ST SEC 20-2-75.1]

Current through End of 2003 Organizational Session

§ 20-2-76. Penalties for second or subsequent offenses; when offense deemed second or subsequent offense. Repealed by Acts 1987, No. 87-603, § 12, effective October 21, 1987. [AL ST SEC 20-2-76]

Current through End of 2003 Organizational Session

§ 20-2-77. Conviction or acquittal under federal law or state law to bar prosecution for same violation under chapter. Repealed by Acts 1987, No. 87-603, § 12, effective October 21, 1987. [AL ST SEC 20-2-77]

Current through End of 2003 Organizational Session

§ 20-2-78. Penalties imposed for violations of chapter in addition to other civil or administrative penalties or sanctions. [AL ST SEC 20-2-78]

Current through End of 2003 Organizational Session

[References](#)

Any penalty imposed for violation of this chapter is in addition to and not in lieu of any civil or administrative penalty or sanction otherwise authorized by law.
(Acts 1971, No. 1407, p. 2378, § 404.)

REFERENCES

RESEARCH REFERENCES

Annotations:

Consumption or destruction of physical evidence due to testing or analysis by prosecution's expert as warranting suppression of evidence or dismissal of case against accused in state court. 40 A.L.R.4th 594.

§ 20-2-79. Transferred to § 13A-12-250 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. [AL ST SEC 20-2-79]

Current through End of 2003 Organizational Session

ARTICLE 4A. TRAFFICKING IN ILLEGAL DRUGS.

§§ 20-2-80, 20-2-81. Transferred to §§ 13A-12-231 and 13A-12-232 by Acts 1988, 1st Ex. Sess. No. 88-918, p. 512, § 2, effective September 30, 1988. [AL ST SEC 20-2-80]

Current through End of 2003 Organizational Session

§§ 20-2-80, 20-2-81. Transferred to §§ 13A-12-231 and 13A-12-232 by Acts 1988, 1st

Current through End of 2003 Organizational Session

ARTICLE 5. ENFORCEMENT.

REFERENCES

RESEARCH REFERENCES

Annotations:

Entrapment to commit offense with respect to narcotics law. 33 A.L.R.2d 883.

Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged. 5 A.L.R.4th 1128, 61 A.L.R.2d 677.

ANNOTATIONS

CASENOTES

Cited in Jones v. State, 432 So.2d 19 (Ala.Crim.App.1983).

Burden of proof 2 enter p

Prima facie case 1 enter p

1. Prima facie case

The standard of proof is reasonable satisfaction in a civil forfeiture proceeding based on violation of the Uniform Controlled Substances Act. Harris v. State, 821 So.2d 177 (Ala.2001).

2. Burden of proof

State seeking civil forfeiture of currency had the burden of proving that the currency was either (1) money furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law in this state, or (2) proceeds traceable to such an exchange, or (3) money used or intended to be used to facilitate a violation of any law of this state concerning controlled substances. Harris v. State, 821 So.2d 177 (Ala.2001).

§ 20-2-90. State Board of Pharmacy, Department of Public Safety, etc., to enforce chapter; drug inspectors to meet minimum standards. [AL ST SEC 20-2-90]

Current through End of 2003 Organizational Session

Historical Notes Annotations

(a) The State Board of Pharmacy and its drug inspectors shall enforce all provisions of this chapter. The agents and officers of this Department of Public Safety, the drug and narcotic agents and inspectors of the State Board of Health, the investigators of the State Board of Medical Examiners, the investigators of the Board of Dental Examiners, and all peace officers of the state and all prosecuting attorneys are also charged with the enforcement of this chapter. The agents and officers of the Department of Public Safety,

the drug inspectors of the State Board of Pharmacy, the investigators of the State Board of Medical Examiners, the investigators of the Board of Dental Examiners, and the drug and narcotic agents and inspectors of the State Board of Health shall have the powers of peace officers in the performance of their duties to:

(1) Make arrests without warrant for any offense under this chapter committed in their presence, or if they have probable cause to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony.

(2) Make seizures of property pursuant to this chapter.

(3) Carry firearms in the performance of their official duties.

(b) In addition to the requirements of subsection (a), drug inspectors of the State Board of Pharmacy shall, beginning October 1, 1993, meet the minimum standards required of peace officers in this state.

(Acts 1971, No. 1407, p. 2378, § 501; Acts 1981, No. 81-657, p. 1073; Acts 1987, No. 87-578, p. 923, § 1; Acts 1993, No. 93-671, p. 1209, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1993 amendment, effective May 17, 1993, added the (a) designator to the first paragraph; in subsection (a), in the first sentence, deleted "It shall be the duty of" at the beginning of the sentence and substituted "shall enforce" for "to enforce"; and added subsection (b).

ANNOTATIONS

CASENOTES

1. Generally

Phrase "make seizures of property" contained in this section does not authorize ABC agents to execute search warrants by themselves. Instead, in accordance with §§ 15-5-5 and 15-5-7, a search warrant, to be legal, must be executed by or at the direction of county officials. At this point, a seizure of property pursuant to the search is authorized by this section. *Rivers v. State*, 406 So.2d 1021 (Ala.Crim.App.1981), writ denied 406 So.2d 1023.

Cited in *Sexton v. State*, 349 So.2d 126 (Ala.Crim.App.1977).

§ 20-2-91. Inspection of stocks of controlled substances and prescriptions, orders, etc., required by chapter; disclosure of information as to prescriptions, orders, etc., by enforcement personnel. [AL ST SEC 20-2-91]

Current through End of 2003 Organizational Session

References

(a) Prescriptions, orders and records required by this chapter and stocks of controlled

substances enumerated in schedules I, II, III, IV and V shall be open for inspection only to federal, state, county and municipal officers, the investigators of the board of dental examiners, and the agents and officers of the department of public safety whose duty it is to enforce the laws of this state or of the United States relating to controlled substances.

(b) No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.
(Acts 1971, No. 1407, p. 2378, § 502; Acts 1987, No. 87-578, p. 923, § 1.)

REFERENCES

RESEARCH REFERENCES

Corpus Juris Secundum:

28 CJS, Drugs & Narcotics § 25.

§ 20-2-92. Injunctions. [AL ST SEC 20-2-92]

Current through End of 2003 Organizational Session

[References](#)

(a) The circuit courts of this state have jurisdiction to restrain or enjoin violations of this chapter.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or temporary restraining order under this section.

(Acts 1971, No. 1407, p. 2378, § 503.)

REFERENCES

CROSS REFERENCES

As to rules of supreme court relative to injunctions, see A.R.C.P.,.

RESEARCH REFERENCES

Corpus Juris Secundum:

28 CJS, Drugs & Narcotics § 69.

§ 20-2-93. Forfeitures; seizures. [AL ST SEC 20-2-93]

Current through End of 2003 Organizational Session

[Historical Notes](#) [References](#) [Annotations](#)

(a) The following are subject to forfeiture:

(1) All controlled substances which have been grown, manufactured, distributed, dispensed or acquired in violation of any law of this state;

(2) All raw materials, products and equipment of any kind which are used or intended for use in manufacturing, cultivating, growing, compounding, processing,

delivering, importing or exporting any controlled substance in violation of any law of this state;

(3) All property which is used or intended for use as a container for property described in subdivision (1) or (2) of this subsection;

(4) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law of this state; all proceeds traceable to such an exchange; and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any law of this state concerning controlled substances;

(5) All conveyances, including aircraft, vehicles, or vessels, or agricultural machinery, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of any property described in subdivision (1) or (2) of this subsection;

(6) All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used or intended for use in violation of any law of this state concerning controlled substances;

(7) All imitation controlled substances as defined under the laws of this state;

(8) All real property or fixtures used or intended to be used for the manufacture, cultivation, growth, receipt, storage, handling, distribution, or sale of any controlled substance in violation of any law of this state;

(9) All property of any type whatsoever constituting, or derived from, any proceeds obtained directly, or indirectly, from any violation of any law of this state concerning controlled substances;

(b) Property subject to forfeiture under this chapter may be seized by state, county or municipal law enforcement agencies upon process issued by any court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) The state, county, or municipal law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The state, county or municipal law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the state, county or municipal law enforcement agency subject only to the orders and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the state, county or municipal law enforcement agency may:

(1) Place the property under seal;

(2) Remove the property to a place designated by it;

(3) Require the state, county or municipal law enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law; and

(4) In the case of real property or fixtures, post notice of the seizure on the property, and file and record notice of the seizure in the probate office.

(e) When property is forfeited under this chapter the state, county or municipal law enforcement agency may:

(1) Retain it for official use; except for lawful currency (money) of the United States of America which shall be disposed of in the same manner provided for the disposal of proceeds from a sale in subdivision (e)(2) of this section;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds from the sale authorized by this subsection shall be used, first, for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of or custody, advertising and court costs; and the remaining proceeds from such sale shall be awarded and distributed by the court to the municipal law enforcement agency or department, and/or county law enforcement agency or department, and/or state law enforcement agency or department, following a determination of the court of whose law enforcement agencies or departments are determined by the court to have been a participant in the investigation resulting in the seizure, and such award and distribution shall be made on the basis of the percentage as determined by the court, which the respective agency or department contributed to the police work resulting in the seizure. Provided however, any proceeds from sales authorized by this section awarded by the court to a county or municipal law enforcement agency or department shall be deposited into the respective county or municipal general fund and made available to the affected law enforcement agency or department upon requisition of the chief law enforcement official of such agency or department.

(3) Require the state, county or municipal law enforcement agency to take custody of the property and remove it for disposition in accordance with law.

(f) Controlled substances listed in schedule I that are possessed, transferred, sold or offered for sale in violation of any law of this state are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in schedule I which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(g) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of any law of this state or of which the owners or cultivators are unknown or which are wild growths may be seized and summarily forfeited to the state.

(h) An owner's or bona fide lienholder's interest in real property or fixtures shall not be forfeited under this section for any act or omission unless the state proves that that act or omission was committed or omitted with the knowledge or consent of that owner or lienholder. An owner's or bona fide lienholder's interest in any type of property other than real property and fixtures shall be forfeited under this section unless the owner or bona fide lienholder proves both that the act or omission subjecting the property to forfeiture was committed or omitted without the owner's or lienholder's knowledge or consent and that the owner or lienholder could not have obtained by the exercise of

reasonable diligence knowledge of the intended illegal use of the property so as to have prevented such use. Except as specifically provided to the contrary in this section, the procedures for the condemnation and forfeiture of property seized under this section shall be governed by and shall conform to the procedures set out in Sections 28-4-286 through 28-4-290, except that: (1) the burden of proof and standard of proof shall be as set out in this subsection instead of as set out in the last three lines of Section 28-4-290; and (2) the official filing the complaint shall also serve a copy of it on any person, corporation, or other entity having a perfected security interest in the property that is known to that official or that can be discovered through the exercise of reasonable diligence.

(Acts 1971, No. 1407, p. 2378, § 504; Acts 1981, No. 81-413, p. 650; Acts 1982, No. 82-426, p. 670, § 4; Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, § 1; Acts 1988, No. 88-651, p. 1038, § 2; Acts 1989, No. 89-525, p. 1074; Acts 1990, No. 90-472.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1990 amendment, effective April 18, 1990, in subdivision (e)(2), substituted "law enforcement agency or department, and/or county law enforcement agency or department, and/or state law enforcement agency or department, following a determination of the court of" for "and/or county, and/or state general fund" in the second sentence, and added the last sentence.

Code Commissioner's Notes:

Acts 1988, No. 88-651, § 1 provides: "This act shall be entitled 'The Drug Profits Forfeiture Act of 1988.'"

REFERENCES

RESEARCH REFERENCES

Annotations:

Effect of forfeiture proceedings under Uniform Controlled Substances Act or similar statute on lien against property subject to forfeiture. 1 A.L.R.5th 317.

Forfeitability of property, under Uniform Controlled Substances Act or similar statute, where property or evidence supporting forfeiture was illegally seized. 1 A.L.R.5th 346.

Application of forfeiture provisions of Uniform Controlled Substances Act or similar statute where drugs were possessed for personal use. 1 A.L.R.5th 375.

Forfeitability of property under Uniform Controlled Substances Act or similar statute where amount of controlled substance seized is small. 6 A.L.R.5th 652.

Delay in setting hearing date or in holding hearing as affecting forfeitability under Uniform Controlled Substances Act or similar statute. 6 A.L.R.5th 711.

Forfeiture of homestead based on criminal activity conducted on premises -- state cases. 16 A.L.R.5th 855.

Forfeiture of money to state or local authorities based on its association with or proximity to other contraband. 38 A.L.R.4th 496.

Necessity of conviction of offense associated with property seized in order to support forfeiture of property to state or local authorities. 38 A.L.R.4th 515.

Consumption or destruction of physical evidence due to testing or analysis by prosecution's expert as warranting suppression of evidence or dismissal of case against accused in state court. 40 A.L.R.4th 594.

Forfeitability of property held in marital estate under uniform controlled substances act or similar statute. 84 A.L.R.4th 620.

Real property as subject of forfeiture under Uniform Controlled Substances Act or similar statutes. 86 A.L.R.4th 995.

Timeliness of institution of proceedings for forfeiture under Uniform Controlled Substances Act or similar statute. 90 A.L.R.4th 493.

Effect of forfeiture proceedings under Uniform Controlled Substances Act or similar statute on lien against property subject to forfeiture. 1 A.L.R.5th 317.

Forfeitability of property, under uniform controlled substances act or similar statute, where property or evidence supporting forfeiture was illegally seized. 1 A.L.R.5th 346.

Corpus Juris Secundum:

28 CJS, Drugs & Narcotics §§ 138-141.

ANNOTATIONS

CASENOTES

- I. In General..... enter p
- II. Practice and Procedure..... enter p

I. IN GENERAL

Appeal and review 13.5 enter p

1. Generally

Requirement that forfeiture proceedings be promptly instituted is necessary to the constitutional exercise of the state's power to interfere with the property rights of its citizens by seizing their property without the possibility of its release by the giving of a bond. \$3,011 in U.S. Currency v. State, 2002 WL 734348 (Ala.Civ.App.2002).

The standard of proof is reasonable satisfaction in a civil forfeiture proceeding based on violation of the Uniform Controlled Substances Act. Harris v. State, 821 So.2d 177 (Ala.2001).

Action in rem. A civil forfeiture action is not an action in personam against the owner or claimant of the property; rather, it is an action in rem against the property itself. Agee v. State ex rel. Galanos, 627 So.2d 960 (Ala.Civ.App.1993).

Failure of state to establish prima facie case. If the state fails to present reasonably satisfying evidence that the property sought to be forfeited was derived from proceeds obtained from any violation of any law of the state concerning controlled substances, the forfeiture proceeding must fail. Agee v. State ex rel. Galanos, 627 So.2d 960 (Ala.Civ.App.1993).

There is no statute or rule of court which establishes the procedure for court proceedings for condemnation of property seized subject to forfeiture. First National Bank of Columbiana v. State, 403 So.2d 258 (Ala.Civ.App.1981).

Judicial proceedings required in all forfeiture actions. Judicial proceedings are

required constitutionally in all forfeiture actions initiated pursuant to this section. *Kirkland v. State ex rel. Baxley*, 340 So.2d 1121 (Ala.Civ.App.1976), writ denied 340 So.2d 1127.

The legislative intent, as manifested by a joint reading of subsections (c) and (d), was to require judicial proceedings in all forfeiture proceedings under this section, even though subsection (d) does not expressly state the requirement. *Kirkland v. State ex rel. Baxley*, 340 So.2d 1121 (Ala.Civ.App.1976), writ denied 340 So.2d 1127.

Section was patterned after proposed Uniform Controlled Substances Act recommended by the National Conference of Commissioners on Uniform State Laws. *Reeder v. State ex rel. Myers*, 294 Ala. 260, 314 So.2d 853 (Ala.1975).

2. Constitutionality

Statutory mandate that forfeiture proceedings be instituted promptly is necessary to the statute's constitutionality. \$3,011 in *U.S. Currency v. State*, 2002 WL 734348 (Ala.Civ.App.2002).

Constitutional protection. Statutes authorizing confiscation and forfeiture obviously carry serious implications for rights guaranteed by the federal and state constitutions. *Woods v. Reeves*, 628 So.2d 563 (Ala.1993).

The necessity of prompt action to adjudicate the merits of the seizure and to effectuate the forfeiture is what is constitutionally required. *Woods v. Reeves*, 628 So.2d 563 (Ala.1993).

Guilt or innocence of property's owner is constitutionally irrelevant. In a civil forfeiture action, because the state is proceeding against the "offending" property, the guilt or innocence of the property's owner is constitutionally irrelevant. *Agee v. State ex rel. Galanos*, 627 So.2d 960 (Ala.Civ.App.1993).

Constitutionality of statute hinges on promptness requirement. The constitutionality of the forfeiture statute hinges on the state's adherence to the mandate that all forfeiture proceedings be instituted promptly. *Adams v. State ex rel. Whetstone*, 598 So.2d 967 (Ala.Civ.App.1992).

The mandate in the statute that forfeiture proceedings be instituted promptly is necessary to the statute's constitutionality. *Reach v. State*, 530 So.2d 40 (Ala.1988).

Constitutionality of section. This section is constitutional even though it permits the deprivation of property without a prior hearing. *Kirkland v. State ex rel. Baxley*, 340 So.2d 1121 (Ala.Civ.App.1976), writ denied 340 So.2d 1127.

The interruption of the individual's dominion over his property under this section pending the prompt initiation of judicial proceedings to determine the propriety of the seizure does not constitute an unreasonable deprivation of property forbidden by the Constitution. *Kirkland v. State ex rel. Baxley*, 340 So.2d 1121 (Ala.Civ.App.1976), writ denied 340 So.2d 1127.

The want of a bond provision in this section does not render it constitutionally defective so long as it provides interested parties the right to a prompt hearing. *Kirkland v. State ex rel. Baxley*, 340 So.2d 1121 (Ala.Civ.App.1976), writ denied 340 So.2d 1127.

3. Purpose

The forfeiture provisions are clearly intended to be a deterrent to illegal drug dealing, and to aid the objectives of criminal law enforcement. *Nicaud v. State ex rel. Hendrix*,

401 So.2d 43 (Ala.1981).

4. Applicability

Defendant cannot defeat the intent of the forfeiture statute by having the cocaine on his person rather than on the seat beside him. *State v. Pudzis*, 507 So.2d 531 (Ala.Civ.App.1987).

This section addresses the forfeiture of two specific types of conveyances, viz., those conveyances "used" in the transportation of a controlled substance and those conveyances "intended for use." *Singleton v. State*, 396 So.2d 1050 (Ala.1981).

Money does not fall within any of the categories of forfeiture. *Jackson v. Evans*, 379 So.2d 1236 (Ala.1979).

5. Construction

Statutes authorizing condemnation and forfeiture of property must be strictly construed. *Jackson v. Evans*, 379 So.2d 1236 (Ala.1979) ; *State v. Blair*, 435 So.2d 124 (Ala.Civ.App.1983).

Strict construction. Statutes which authorize condemnation and forfeiture of property are highly penal in nature and must be strictly construed. *Reeder v. State*, 294 Ala. 260, 314 So.2d 853 (1975) (superseded by statute on other grounds as stated in \$10,000 U.S. Currency in Possession of *Bruce v. State*, 598 So.2d 979 (Ala. Civ. App.)); *Cumbie v. State*, 515 So.2d 973 (Ala.Civ.App.1987).

Bare filing of a complaint seeking forfeiture, while a necessary component of instituting a forfeiture proceeding, does not alone constitute institution of such a proceeding. \$3,011 in U.S. Currency *v. State*, 2002 WL 734348 (Ala.Civ.App.2002).

Under test formulated by United States Supreme Court for determining whether forfeiture action, notwithstanding legislature's expressed intent, amounts to criminally punitive sanction for double jeopardy purposes, court first must consider legislative intent, and if it appears that forfeiture statute is intended to be solely remedial civil action, then inquiry must proceed and court must analyze whether effect of forfeiture scheme is so extreme as to make sanction punitive, regardless of remedial intent; party claiming that double jeopardy violation has occurred must establish by clearest proof that forfeiture sanction was so severe that it transformed what was clearly intended as civil remedy into criminal penalty. *Wilhite v. State*, 689 So.2d 221 (Ala.Crim.App.1996), rehearing denied, certiorari denied.

Forfeiture statute is penal in nature and, therefore, must be strictly construed. *Williams v. State*, 674 So.2d 591 (Ala.Civ.App.1995), rehearing denied, certiorari denied.

Strict construction is required concerning statute concerned with controlled substance offense, since it is penal in nature. *Grant v. State*, 668 So.2d 20 (Ala.Civ.App.1995), rehearing denied, certiorari quashed as improvidently granted 668 So.2d 23.

This section is penal in nature and must be strictly construed. *Wherry v. State ex rel. Brooks*, 637 So.2d 890 (Ala.Civ.App.1994).

This section authorizes condemnation and forfeiture. Forfeiture statute is penal in nature and must be strictly construed. *Agee v. State ex rel. Galanos*, 627 So.2d 960 (Ala.Civ.App.1993).

This statute is penal in nature and therefore should be strictly construed. *State ex rel.*

Valeska v. Keener, 606 So.2d 150 (Ala.Civ.App.1992), certiorari denied.

The forfeiture statute is highly penal in nature and must be strictly construed. \$10,000 U.S. Currency in Possession of Bruce v. State, 598 So.2d 979 (Ala.Civ.App.1992).

When the state seeks to seize, condemn, and forfeit property under this section, the section must be strictly construed, and the state must establish by the evidence a prima facie case; the standard of proof is reasonable satisfaction. Miller v. State, 567 So.2d 331 (Ala.Civ.App.1990), certiorari denied.

This section authorizes condemnation and forfeiture and thus is highly penal in nature and must be strictly construed. State v. Bilotta, 522 So.2d 300 (Ala.Civ.App.1988).

A statute authorizing the seizure, forfeiture, and condemnation is extremely penal in nature and as such, should be strictly construed. Felder v. State, 515 So.2d 17 (Ala.Civ.App.1987).

This section must be strictly construed since it authorizes the condemnation and forfeiture of money or other property. \$3,976.00 U.S. Currency in Possession of Glen F. Sasser v. State, 484 So.2d 1088 (Ala.Civ.App.1985).

Forfeiture statutes, because of their penal nature, are subject to strict construction. Nicaud v. State ex rel. Hendrix, 401 So.2d 43 (Ala.1981).

Reference in subdivision (4) of subsection (a) of this section to property described in subdivisions (1) or (2) is to controlled substances. Kirkland v. State ex rel. Baxley, 340 So.2d 1121 (Ala.Civ.App.1976), writ denied 340 So.2d 1127.

6. Relationship with other laws

Proceeding pursuant to § 32-8-86(h). The language of this section has no effect on the forfeiture of the automobile in proceedings instituted pursuant to § 32-8-86(h). Glover v. State, 553 So.2d 131 (Ala.Civ.App.1989).

Sections 28-4-285 and 28-4-290 compared. This section, unlike §§ 28-4-285 and 28-4-290, does not require reasonable diligence in inquiring as to the proposed use of the car or contain a provision that would impute notice of reputation as a matter of law. Metropolitan Toyota, Inc. v. State ex rel. Galanos, 496 So.2d 25 (Ala.1986).

In rem civil forfeitures under Drug Profits Forfeiture Act do not constitute punishment for purposes of Fifth Amendment's double jeopardy clause. Money v. State, 717 So.2d 38 (Ala.Crim.App.1997), rehearing denied, certiorari denied.

Although weapons found in stolen car were not subject to statutory condemnation, weapons were lost property and police department became owner of weapons pursuant to provision governing stolen property abandoned by thief at place unknown to owner; claimant, whose grandson allegedly stole the car from house of claimant's son, did not establish that he owned the weapons in condemnation action, and son did not file claim. Frederick v. State, 719 So.2d 233 (Ala.Civ.App.1998), rehearing denied, certiorari denied.

7. "Promptly"

Forfeiture proceeding not instituted promptly is ineffectual. \$3,011 in U.S. Currency v. State, 2002 WL 734348 (Ala.Civ.App.2002).

What is "prompt," for purposes of a forfeiture proceeding, is decided on the facts of a given case, but a fairly short time frame, namely less than seven to 10 months, is evident. \$3,011 in U.S. Currency v. State, 2002 WL 734348 (Ala.Civ.App.2002).

The term "promptly" has been construed to mean within a reasonable time in light of all the circumstances. In *State v. \$17,636.00 in U.S. Currency*, 650 So.2d 900 (Ala.Civ.App.1994), rehearing denied, certiorari denied.

The mandate in the statute that forfeiture proceedings be instituted promptly is necessary to the statute's constitutionality. *Adams v. State ex rel. Whetstone*, 598 So.2d 967 (Ala.Civ.App.1992).

Forfeiture proceeding that is not instituted promptly is ineffectual. *Adams v. State ex rel. Whetstone*, 598 So.2d 967 (Ala.Civ.App.1992).

Reasonable period of time. There is no mathematical formula which can be used to determine what constitutes a reasonable period of time. What is a reasonable time for an act to be done depends upon the nature of the act to be done and all the circumstances relating to that act. *Glover v. State*, 553 So.2d 131 (Ala.Civ.App.1989).

It is required that forfeiture proceedings be instituted promptly. *Tucker v. State*, 445 So.2d 311 (Ala.Civ.App.1984).

Must be instituted promptly. The judicial proceedings required constitutionally in all forfeiture proceedings pursuant to this section must be instituted promptly. *Kirkland v. State ex rel. Baxley*, 340 So.2d 1121 (Ala.Civ.App.1976), writ denied 340 So.2d 1127.

8. -- Particular circumstances

Court of Civil Appeals was required to presume that trial court had adequate evidence to support its denial of movant's motion for relief from judgment wherein court declared currency contraband and forfeited currency to state, where movant failed to include in record transcript of trial court's hearing on motion. *Heflin v. State*, 689 So.2d 163 (Ala.Civ.App.1996).

Failure to meet promptness requirement where owner's address not current. Trial court did not err when it dismissed the State's forfeiture petition on the grounds that the State failed to meet the promptness requirement of subsection (c) due to the delay caused by the State's failure to serve owner of seized currency properly. Owner's address, as stated in the petition, was not his current location, and the State was either aware of that fact or could have easily ascertained that fact. Therefore, the State did not have "intention of having process served," an ARCP, Rule 3 filing requirement, when it filed the forfeiture petition which listed an incorrect address for owner. In *State v. \$17,636.00 in U.S. Currency*, 650 So.2d 900 (Ala.Civ.App.1994), rehearing denied, certiorari denied.

Forfeiture proceedings instituted by the State twelve days after defendant's car was seized were "prompt" under this section. *Milstid v. State*, 634 So.2d 585 (Ala.Civ.App.1994).

The state has lost its right to a forfeiture where after more than four years has passed and no condemnation proceedings have been initiated. *Woods v. Reeves*, 628 So.2d 563 (Ala.1993).

Failure to meet promptness requirement was denial of due process. Civil forfeiture proceeding, which was instituted over seven months after the money was taken from criminal defendant's possession, did not meet the promptness requirement and deprived him of due process of law. *\$1,113.77 U.S. Currency v. State, Escambia County*, 606 So.2d 151 (Ala.Civ.App.1992), certiorari denied.

Forfeiture proceeding met promptness requirement. A forfeiture proceeding instituted four weeks after seizure meets the promptness requirement of the statute.

Adams v. State ex rel. Whetstone, 598 So.2d 967 (Ala.Civ.App.1992).

Ten weeks should not be considered the time period within which to institute forfeiture proceedings; absent future legislative guidance, the facts and circumstances of each case may cause this issue to be decided on a case by case basis. Adams v. State ex rel. Whetstone, 598 So.2d 967 (Ala.Civ.App.1992).

Promptness requirement not met. A delay of ten weeks between the time of the seizure of the vehicle in this case and the institution of the forfeiture proceeding did not meet the promptness requirement of this section. Adams v. State ex rel. Whetstone, 598 So.2d 967 (Ala.Civ.App.1992).

Defendant had no statutory duty to request the release of his vehicles since the statute places an affirmative duty on the state to institute a forfeiture proceeding promptly. Reach v. State, 530 So.2d 40 (Ala.1988).

Where the state instituted forfeiture proceeding approximately eight months after seizing defendant's vehicles, it denied defendant due process of law, since during those eight months, defendant had no way of knowing whether the seizure would eventually be upheld, he could not post a bond to obtain the temporary use of his vehicles pending a determination concerning the validity of the seizure, and his one demand of record that the vehicles be released was ineffectual. Reach v. State, 530 So.2d 40 (Ala.1988).

A forfeiture proceeding under this section instituted approximately four weeks after seizure meets the promptness requirement, but a proceeding brought after eight months does not. Reach v. State, 530 So.2d 40 (Ala.1988).

Proceedings instituted three and one-half weeks after seizure were prompt under this section. Eleven Automobiles v. State, 384 So.2d 1129 (Ala.Civ.App.1980).

Proceedings instituted approximately four weeks after seizure are permissible. Eleven Automobiles v. State, 384 So.2d 1129 (Ala.Civ.App.1980).

Proceedings instituted approximately three and one-half weeks after service are permissible. Winstead v. State, 375 So.2d 1207 (Ala.Civ.App.1979), writ denied 375 So.2d 1209.

9. "Sale" or "Receipt"

As to the meaning of the phrase "for the purpose of sale or receipt," see Reeder v. State, 294 Ala. 260, 314 So.2d 853 (1975) (superseded by statute on other grounds as stated in \$10,000 U.S. Currency in Possession of Bruce v. State, 598 So.2d 979 (Ala. Civ. App.)); State ex rel. Williams v. One Glastron Boat, 411 So.2d 795 (Ala.Civ.App.1982).

"Receipt," as it is used in drug forfeiture statutes, has been defined as "receiving for the purpose of sale or in some way to facilitate the sale of drugs; it does not mean possession merely." Miller v. State, 567 So.2d 331 (Ala.Civ.App.1990), certiorari denied.

"Receipt" as used in this section means receiving for the purpose of sale. It does not mean mere possession. State ex rel. Williams v. One Glastron Boat, 411 So.2d 795 (Ala.Civ.App.1982).

Receipt does not mean possession merely. Reeder v. State ex rel. Myers, 294 Ala. 260, 314 So.2d 853 (Ala.1975).

Where the express inclusion of a specific act or acts, here "sale or receipt," evidences an intent to exclude those acts not so carried over from a preexisting statute, here "possession," no attempt should be made to read into the new statute such acts. Reeder v.

State ex rel. Myers, 294 Ala. 260, 314 So.2d 853 (Ala.1975).

Receipt means receiving for purpose of sale or in some way to facilitate sale of drugs. Reeder v. State ex rel. Myers, 294 Ala. 260, 314 So.2d 853 (Ala.1975).

10. Rights of lienholders

Pawnshop was not a bona fide owner, but only a lienholder and, thus, was not entitled to automobile under forfeiture statute on date that it was seized by State; although maturity date of pawn had passed at time of seizure, pawnshop's right to vehicle's title did not vest until eight days after seizure. State ex rel. Morgan v. Thompson, 791 So.2d 977 (Ala.Civ.App.2001).

Evidence established father's status as "secured party" within meaning of § 7-9-105(1)(m), and thus his status as "bona fide lienholder" whose interest in vehicle was not subject to forfeiture following son's arrest for drug offense; agreement executed by father and son indicated that father was first lienholder, and son's testimony indicated that parties intended that father have interest in vehicle that secured son's payment of loan to father; moreover, father perfected his security interest in accordance with statute. Jester v. State, 668 So.2d 822 (Ala.Civ.App.1995).

For purposes of this section, "bona fide lienholder" is one who, before seizure, had actual, good faith interest in property not derived by fraud or deceit and one who had no actual or constructive knowledge of intended illegal use of property. Jester v. State, 668 So.2d 822 (Ala.Civ.App.1995).

Section protects bona fide lienholders. The clear language of this section evidences a legislative intent to protect bona fide lienholders without destroying the right of the state to condemn a vehicle used in violation of the Controlled Substances Act. Singleton v. State, 396 So.2d 1050 (Ala.1981).

11. Knowledge

Owner was entitled to return of vehicle seized while in possession of stepson, where owner did not have knowledge of nor gave consent to commission of any act or omission subjecting property to forfeiture. State v. Sweatt, 668 So.2d 18 (Ala.Civ.App.1994), rehearing denied.

Owners or lienholders as to certain property may prevail in forfeiture proceedings if they prove that the act was committed without their knowledge and that they could not have obtained that knowledge by the exercise of reasonable diligence so as to have prevented the illegal use. Culpepper v. State, 587 So.2d 359 (Ala.Civ.App.1991).

Wife could have obtained knowledge of illegal use through reasonable diligence. Evidence supported the trial court's finding that wife could have obtained knowledge of husband's illegal use of automobile had she exercised reasonable diligence; the evidence at trial revealed that the wife had known for over seven years that the husband smoked marijuana; she knew that he kept marijuana in their home; she also knew that people would come to their home, but never come in; furthermore, the wife testified that she knew that the husband was getting marijuana from somewhere, but never inquired into his source and never asked if he was selling marijuana. Edwards v. State, 550 So.2d 1035 (Ala.Civ.App.1989).

No conveyance is subject to forfeiture under this section by reason of any act or omission committed without the knowledge or consent of the owner. However, where

the person to whom such conveyance is made is known to the community and law enforcement officials as a criminal offender, forfeiture is justified. *Pugh v. State ex rel. Galanos*, 441 So.2d 931 (Ala.Civ.App.1983).

Lack of knowledge or consent is an affirmative defense, available after the state has made a prima facie case for forfeiture by showing that the vehicle in question was used or intended for use in the transportation of a controlled substance for the purpose of sale or receipt. The issue of knowledge or consent is therefore irrelevant until the state proves a "purpose of sale or receipt." *State ex rel. Williams v. One Glastron Boat*, 411 So.2d 795 (Ala.Civ.App.1982).

This section is not so penal as to provide for forfeiture of property used in the commission of a crime regardless of the innocence of the owner or lienholder. Thus, it is recognized that a lienholder has an interest in the property sought to be forfeited to the state. *First National Bank of Columbiana v. State*, 403 So.2d 258 (Ala.Civ.App.1981).

12. Ownership

Certificate of title. In forfeiture action, a certificate of title to an automobile is only prima facie evidence of ownership, which can be contradicted by other evidence. *Agee v. State ex rel. Galanos*, 627 So.2d 960 (Ala.Civ.App.1993).

Evidence sufficient to support defendant as vehicle owner. In a proceeding pursuant to this section where the defendant admitted that the defendant's mother "sold" the automobile to him for \$500, but contended that only \$200 was ever paid to the defendant's mother and that he thus "abandoned his contract" and the defendant's mother still owns the vehicle and that title to the vehicle was in the defendant's mother's name and that title was never transferred from the defendant's mother to the defendant pursuant to § 32-8-44, the undisputed fact of a "sale" of the vehicle to the defendant, his control and dominion of the vehicle on at least two occasions to make illicit controlled substance transactions, and the lack of any evidence to support the contention that he was not the owner of the automobile was sufficient to support the trial court's finding that the defendant was the owner of the automobile. *Eleven Automobiles v. State*, 384 So.2d 1129 (Ala.Civ.App.1980).

Ownership of seized vehicle can be inferentially established in the defendant, as by evidence that the vehicle was a gift to the defendant from his mother or that the defendant exerted virtually complete dominion and control over the vehicle. *Winstead v. State*, 375 So.2d 1207 (Ala.Civ.App.1979), writ denied 375 So.2d 1209.

13. Miscellaneous

Forfeiture due to illegal drug activity is penal in nature. The forfeiture of a debtor's home due to illegal drug activity is penal in nature, and is meant to punish the wrongdoer. *Matter of Smith*, 176 B.R. 221 (Bkrcty.N.D.Ala.1995).

The plaintiff may not assert a homestead exemption against the property that is subject to the state court forfeiture action. *Matter of Smith*, 176 B.R. 221 (Bkrcty.N.D.Ala.1995).

Supreme Court could not determine whether civil forfeiture of truck was grossly disproportionate to gravity of alleged offense of possession of controlled substance, and thus, whether forfeiture violated excessive fines clause, requiring remand, where there was no evidence indicating truck's value, amount of controlled substance seized from

truck, or criminal charge, if any, made against defendant. *Dorough, Ex Parte*, 773 So.2d 1001 (Ala.2000).

Where forfeiture action for items seized was not promptly instituted in state court after it was apparent that federal forfeiture action was not forthcoming, investigator had not authority to retain custody of seized items and was not entitled to qualified immunity from claim of conversion. *Lightfoot v. Floyd*, 667 So.2d 56 (Ala.1995).

Use of vehicle pending a hearing. This section contains no provision whereby the owner of a seized vehicle may post a bond and secure the use of his vehicle pending a hearing on the merits concerning the seizure. *Reach v. State*, 530 So.2d 40 (Ala.1988).

13.5. Appeal and review

Appellate court could review issue of whether state failed to promptly initiate forfeiture proceedings, even though owner of currency in controversy accepted personal service, where owner sought judgment on basis that state did not comply with statutory requirement that forfeiture proceedings be promptly instituted, trial court denied motion before it heard evidence at ore tenus hearing, and trial court's adverse ruling on motion was "order" or "ruling" as to which owner could seek review on appeal from final judgment of forfeiture. \$3,011 in U.S. Currency v. State, 2002 WL 734348 (Ala.Civ.App.2002).

II. PRACTICE AND PROCEDURE

14. Notice

Notice was insufficient. In a case where seized currency was found in hotel room and owner was arrested on drug related charges, and where the trial court issued an order and directed the clerk of the court to give notice in some newspaper published in county once a week for three consecutive weeks, the notice was insufficient and was not reasonably calculated to apprise owner of money of the pending forfeiture action and, as such, violated owner's due process rights. In *State v. \$17,636.00 in U.S. Currency*, 650 So.2d 900 (Ala.Civ.App.1994), rehearing denied, certiorari denied.

State's failure to personally serve vehicle owner with notice. The State's failure to personally serve known owner of vehicle subject to condemnation with notice of the condemnation did not void the condemnation. *Hodge v. State*, 643 So.2d 982 (Ala.Civ.App.1993).

15. Hearing

Hearing, held less than seven months after the timely filing of the petition for forfeiture, did not violate defendant's due process rights. *Milstid v. State*, 634 So.2d 585 (Ala.Civ.App.1994).

Subsection (c) does not provide for any date when hearings on petitions for forfeiture are to be held; rather, the section requires that proceedings be instituted promptly. *Eleven Automobiles v. State*, 384 So.2d 1129 (Ala.Civ.App.1980).

Where defendant made no motion for speedy hearing. Where the record did not contain any motion by the defendant for a speedy hearing or any other attempt whatsoever to have the hearing prosecuted, hearing held eight months from the date of the filing of the petition seeking forfeiture did not violate the defendant's due process.

Eleven Automobiles v. State, 384 So.2d 1129 (Ala.Civ.App.1980).

16. Parties

City suffered no injury to a legally protected right and, thus, lacked standing to bring action for forfeiture of property used or intended to be used in connection with drug offense, where statute provided that such an action was to be filed by the state and did not give city right to prosecute or to begin such an action. State v. Property at 2018 Rainbow Drive known as Oasis, 740 So.2d 1025 (Ala.1999).

Registered owner of vehicle was real party in interest. Registered owner of vehicle, which was in the possession of juvenile at the time of its seizure, was the real party in interest and was denied an opportunity to make the statutory showing under subsection (h) because he was not made a party to the action. Hodge v. State, 643 So.2d 982 (Ala.Civ.App.1993).

17. Burden of proof; prima facie case

Standard of proof required under this section is reasonable satisfaction. State v. Walker, 503 So.2d 866 (Ala.Civ.App.1987) (superseded by statute on other grounds as stated in \$10,000 U.S. Currency in Possession of Bruce v. State, 598 So.2d 979 (Ala. Civ. App.)); \$1,568.00 U.S. Currency v. State, 612 So.2d 497 (Ala.Civ.App.1992).

State failed to establish prima facie case for forfeiture of currency found in motorist's vehicle in proximity to small quantity of prescription painkillers and marijuana, following motorist's traffic stop and arrest for driving under influence of alcohol, where drugs were in small quantity, drugs were not packaged for sale, no paraphernalia indicating sale was found with drugs, motorist's explanation for large quantity of cash, that is, that he had recently cashed paychecks and sold pick-up truck for cash, was credible, motorist was gainfully employed, and motorist's brother-in-law, who often borrowed motorist's vehicle, had prescription for pills found in vehicle. Gatlin v. State, 2002 WL 1822113 (Ala.Civ.App.2002).

In a civil forfeiture proceeding, the state may establish a prima facie case by showing that the item to be forfeited was used, or intended to be used, in violation of the Uniform Controlled Substances Act. Harris v. State, 821 So.2d 177 (Ala.2001).

State seeking civil forfeiture of currency had the burden of proving that the currency was either (1) money furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law in this state, or (2) proceeds traceable to such an exchange, or (3) money used or intended to be used to facilitate a violation of any law of this state concerning controlled substances. Harris v. State, 821 So.2d 177 (Ala.2001).

In order to make a prima facie showing that property in form of currency is due to be confiscated pursuant to state forfeiture statute, the State must prove that the currency seized was: (1) furnished or intended to be furnished by claimant in exchange for a controlled substance; (2) traceable to such a transaction; or (3) used or intended to be used to facilitate a violation of any law of this state concerning controlled substances. Hillegass v. State, 795 So.2d 749 (Ala.Civ.App.2001).

In order for property to be seized, condemned and forfeited as being used to facilitate controlled substance offense, state must establish prima facie case by reasonably satisfying evidence. Grant v. State, 668 So.2d 20 (Ala.Civ.App.1995), rehearing denied,

certiorari quashed as improvidently granted 668 So.2d 23.

Amendment not meant to change proof standard. While the legislature eliminated the necessity of an affirmative finding by the trier of fact in its 1988 amendment of this section, it did not intend to change the burden of proof. Absent legislative action requiring a greater burden of proof, therefore, the state must establish by the evidence a prima facie case for the forfeiture of the property, and the standard of proof is reasonable satisfaction. *Wherry v. State ex rel. Brooks*, 637 So.2d 1353 (Ala.Civ.App.1994).

To properly seize, condemn, and submit property to forfeiture pursuant to this section, the state must first make a prima facie case, and the requisite burden of proof is to the trial court's reasonable satisfaction. *Wherry v. State ex rel. Brooks*, 637 So.2d 890 (Ala.Civ.App.1994).

State must establish by the evidence a prima facie case for the forfeiture of property; the standard of that prima facie proof is reasonable satisfaction. *Agee v. State ex rel. Galanos*, 627 So.2d 960 (Ala.Civ.App.1993).

State's burden of proof. In a forfeiture case, the state had the burden of proving that the currency seized was either (1) money furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law in this state, or (2) proceeds traceable to such an exchange, or (3) money used or intended to be used to facilitate a violation of any law of this state concerning controlled substances. \$1,568.00 U.S. Currency v. State, 612 So.2d 497 (Ala.Civ.App.1992).

In forfeiture and seizure proceedings pursuant to this section, the state may establish a prima facie case by showing that the items in question were used or intended to be used in violation of the Alabama Uniform Controlled Substances Act. *Culpepper v. State*, 587 So.2d 359 (Ala.Civ.App.1991).

Prima facie case required, etc. Under this section the state must establish a prima facie case for the seizure, condemnation, and forfeiture of the property. The standard of proof is reasonable satisfaction. *State v. Smith*, 578 So.2d 1374 (Ala.Civ.App.1991).

The state is required to establish by the evidence a prima facie case for the seizure, condemnation, and forfeiture of property, under this section, and that standard of proof is reasonable satisfaction; before an order of condemnation could have been rendered and entered, the trial court must have been reasonably satisfied from the evidence that the items in question, an automobile and the currency, were used, or were intended to be used, in a transaction which would be a violation of the Alabama Uniform Controlled Substances Act. *Moynes v. State*, 555 So.2d 1086 (Ala.Civ.App.1989), certiorari denied.

The state must establish a prima facie case before it can properly seize and condemn property pursuant to this section. In order to establish a prima facie case, the state must establish by reasonable satisfaction the following two elements: (1) that the defendant was found in the act of selling or receiving or attempting to sell or receive a controlled substance and (2) that money was used or intended for use in a transaction which would be in violation of the Alabama Controlled Substances Act. \$9,886.00 U.S. Currency v. State, 541 So.2d 27 (Ala.Civ.App.1989).

Evidence must link substance to sale or receipt of substance. It takes more than just the existence of small amounts of a controlled substance to condemn under this statute, since there needs to be evidence linking the substance to a sale or receipt of that substance. *Felder v. State*, 515 So.2d 17 (Ala.Civ.App.1987).

To properly seize, condemn, and submit property to forfeiture pursuant to this

section, the state must first establish a prima facie case. Further, the state is required to establish by reasonable satisfaction each element of the statute. *Hayden v. State ex rel. Galanos*, 513 So.2d 638 (Ala.Civ.App.1987).

Prima facie case required for seizure, condemnation, and forfeiture of property. The state is required to establish by the evidence a prima facie case for the seizure, condemnation, and forfeiture of property under this section. *State v. Walker*, 503 So.2d 866 (Ala.Civ.App.1987).

The state must establish a prima facie case for the seizure, condemnation and forfeiture of property under this section. After the prima facie case is established, it is incumbent upon any claimants to show that they had no knowledge or notice of the intended illegal use and could not have obtained knowledge by reasonable diligence. *Pickron v. State ex rel. Johnston*, 443 So.2d 905 (Ala.1983).

The standard of proof required under this section is reasonable satisfaction. *Pickron v. State ex rel. Johnston*, 443 So.2d 905 (Ala.1983).

When the state has met its burden of proving that a vehicle was used in violation of this section, it has established a prima facie case for the seizure, condemnation and forfeiture of the vehicle. *Singleton v. State*, 396 So.2d 1050 (Ala.1981).

Prima facie case by state. It is the law of Alabama that once the state makes out a prima facie case to show violation of this section, the seizure, condemnation, and forfeiture of the vehicle used is permitted. When that prima facie case is made, it becomes incumbent upon the claimants to show that they had no knowledge or notice of the illegal use proved, and could not by reasonable diligence have obtained knowledge of the intended illegal use so as to prevent it. *Air Shipping Intern. v. State*, 392 So.2d 828 (Ala.1981).

When the question is whether the holder of the security interest is entitled to allowance of its claim, the burden is upon the intervener (1) to establish its superior claim and (2) that it had no knowledge or notice of the illegal use and could not by reasonable diligence have obtained notice of the intended illegal use so as to prevent such use. *Air Shipping Intern. v. State*, 392 So.2d 828 (Ala.1981).

State is not required to prove actual movement of the vehicle for this section to be operative. The state is only required to prove the controlled substance was loaded for movement. *Winstead v. State*, 375 So.2d 1207 (Ala.Civ.App.1979), writ denied 375 So.2d 1209.

In forfeiture proceeding, state may establish prima facie case by showing that item to be forfeited was used, or was intended to be used, in violation of Uniform Controlled Substances Act. *McCloud v. State*, 715 So.2d 230 (Ala.Civ.App.1998), rehearing denied, certiorari denied.

18. Evidence

Ore tenus evidence was sufficient to find that all of the currency found in claimant's rented automobile was related to a violation of the Alabama Controlled Substances Act, and, thus was due to be confiscated pursuant to the forfeiture statute; controlled substances were found in the automobile, defendant's passenger told police that he and claimant had spent the weekend "delivering" the "Ecstasy" tablets and that only a portion of an original quantity of tablets remained in their possession, large quantities of currency were found in other areas of the automobile, and that, although claimant testified he had

documentation to prove that \$12,000 in currency was derived from his business, he did not produce any receipts or other documentation at trial. *Hillegass v. State*, 795 So.2d 749 (Ala.Civ.App.2001).

Finding that currency in driver's vehicle was used or intended for use in transaction in violation of Controlled Substances Act was contrary to great weight of evidence, and thus, currency was not subject to forfeiture, where, even though "quite a bit of marijuana stems and seeds" were found in vehicle, neither driver nor passengers was charged with drug possession, vehicle was returned to driver by police, and authorities were unable to trace currency to specific drug transaction. *Holloway v. State ex rel. Whetstone*, 772 So.2d 475 (Ala.Civ.App.2000).

Where witness does not tell the truth. In forfeiture action, when a witness does not testify truthfully to a material fact, the trial court may disregard that witness's testimony altogether. *Agee v. State ex rel. Galanos*, 627 So.2d 960 (Ala.Civ.App.1993).

Where there is conflicting ore tenus testimony, it is the duty of the trial court to resolve the conflict and to render a judgment accordingly. *Agee v. State ex rel. Galanos*, 627 So.2d 960 (Ala.Civ.App.1993).

Exclusionary rule inapplicable in condemnation proceeding. The exclusionary rule expounded in *Hamlet v. State*, 574 So.2d 951 (Ala.Crim.App.1990), reh'g denied, without op. (Ala. Crim. App.), cert. denied (Ala.) is inapplicable in condemnation proceeding under this section. *McNeese v. State ex rel. Cramer*, 592 So.2d 615 (Ala.Civ.App.1992).

In automobile condemnation case involving alleged drug transactions, an inference could not be drawn from witness's testimony involving the alleged drug transaction since such an inference would be sufficient evidence for condemnation to show the use or intended use for sale or receipt. *Felder v. State*, 515 So.2d 17 (Ala.Civ.App.1987).

Equity will not sanction the forfeiture of property based upon evidence obtained in violation of fundamental constitutional rights. *Nicaud v. State ex rel. Hendrix*, 401 So.2d 43 (Ala.1981).

When evidence is obtained by an illegal search and seizure, it is properly excluded from a subsequent forfeiture proceeding. *Nicaud v. State ex rel. Hendrix*, 401 So.2d 43 (Ala.1981).

Statement civil defendant made to sheriff's deputies, in response to promise of leniency, regarding traveling to Miami to purchase marijuana was admissible as declaration against interest in forfeiture action brought against defendant pursuant to the Controlled Substances Act; rule of evidence applied in criminal cases to exclude defendant's statement made in response to promise of leniency did not apply in civil forfeiture cases. *Malholtra v. State*, 717 So.2d 425 (Ala.Civ.App.1998).

19. -- Sufficiency

Suspected drug dealer's possession of marijuana in vehicle formed sufficient basis to support forfeiture of vehicle under forfeitures and seizures statute; narcotics officers observed suspect driving vehicle and weaving in his lane, and, after stopping suspect and smelling odor of marijuana upon approaching vehicle, officers seized 4.74 grams of marijuana from suspect's person and vehicle. *State ex rel. Valeska v. Farrier*, 2003 WL 328953 (Ala.Civ.App.2003).

Civil forfeiture of alleged drug dealer's expensive automobile was improper without evidence that the automobile was used in drug transactions, contained drugs when it was

seized, had been used to transport a controlled substance, or had been purchased with the proceeds from any violation of any law concerning controlled substances. *Harris v. State*, 821 So.2d 177 (Ala.2001).

State failed to present any evidence that automobile was used, or was intended to be used, in violation of Controlled Substances Act, as required to support forfeiture; no drugs were found in the automobile, and driver testified that while he intended to drive car home, he also intended to return cocaine to alleged "third party" prior to returning home. *Robbs v. State ex rel. Whetstone*, 674 So.2d 1301 (Ala.Civ.App.1995), rehearing denied, writ denied 674 So.2d 1304.

Condemnation and forfeiture judgment against landowner's property for growing marijuana was supported by un rebutted evidence that landowner grew 45 marijuana plants, about half of which were being cultivated in garden on his property. *Pointer v. State*, 668 So.2d 41 (Ala.Civ.App.1995), rehearing denied, certiorari denied.

Evidence that about one quarter of ounce of marijuana was found in landowner's house was insufficient to support condemnation and forfeiture of landowner's house, where marijuana was not packaged for sale and there was no evidence that landowner used house to store, sell, or distribute marijuana, or to prepare marijuana for sale. *Pointer v. State*, 668 So.2d 41 (Ala.Civ.App.1995), rehearing denied, certiorari denied.

Evidence that bag containing .02 grams of marijuana was in rear storage compartment of automobile and that card in driver's wallet contained cocaine residue was insufficient to show that either driver or owner of car, who was driver's girlfriend, knew that drugs were in car, or that money in possession of driver was used in or intended to be used in drug transaction, as required for forfeiture of car and money. *Grant v. State*, 668 So.2d 20 (Ala.Civ.App.1995), rehearing denied, certiorari quashed as improvidently granted 668 So.2d 23.

State met burden of proving that seized currency found in bag on front seat of automobile with baggies of cocaine and set of scales, had been used to violate Controlled Substances Act, despite contention that substance found in baggies was not proven to be cocaine, where seizing officer testified based on her experience and familiarity, substance was cocaine. *Johnson v. State*, 667 So.2d 105 (Ala.Civ.App.1995), rehearing denied, writ quashed as improvidently granted 667 So.2d 108.

State met its burden of showing that the currency seized was money "used or intended to be used to facilitate any violation of any law of this state concerning controlled substances." The large amount of cash found on defendant's person and in proximity to the cocaine and marijuana packaged as if for sale, together with the discovery of green marijuana in a quantity suggesting trafficking, could, and doubtless did, reasonably satisfy the finder of fact, hearing evidence presented ore tenus, that the currency seized was being used to facilitate the violation of laws concerning controlled substances. *Shepherd v. State*, 664 So.2d 238 (Ala.Civ.App.1995), rehearing dismissed, certiorari denied.

Forfeiture of automobile could not stand where drugs were seized in illegal search. Because the only evidence supporting the forfeiture was the illegally seized drugs, the forfeiture could not stand. *Williams v. State*, 659 So.2d 972 (Ala.Crim.App.1994).

State met its burden in condemnation and forfeiture of money and an automobile where defendant discarded bag containing 8 individual bags of crack cocaine, drug paraphernalia and money was found in the defendant's room or on his person and in his

room, defendant was unemployed and had no visible means of support, and stated to investigators that he had been selling crack cocaine for approximately 3 1/2 months. *Vaughn v. State*, 655 So.2d 1039 (Ala.Civ.App.1995).

Burden of proof met. The evidence was sufficient for the state to meet its burden of proving that the money it seized from the claimant's home was subject to forfeiture as money used or intended for use in facilitating a violation of a law concerning controlled substances. *\$1,568.00 U.S. Currency v. State*, 612 So.2d 497 (Ala.Civ.App.1992).

Defendant's van was properly forfeited to city, where two officers testified that they witnessed defendant's involvement in a drug transaction in a high drug-traffic area; defendant pleaded guilty to possessing marijuana that was in a belt pouch around his waist when he exited the van, and an additional substance believed to be marijuana was found in the van; and the officers testified that he admitted that he was in the vicinity to purchase or to try to purchase marihuana. *Simmons v. State*, 603 So.2d 1099 (Ala.Civ.App.1992).

In condemnation action under this section, in view of the definition of receipt and the strict construction that must apply to a forfeiture statute, the state failed to establish a prima facie case to support the trial court's determination to condemn the vehicle where no sale of drugs took place. *Miller v. State*, 567 So.2d 331 (Ala.Civ.App.1990), certiorari denied.

Evidence which showed only that defendant was coming out of a bathroom in which the toilet was running, there was a white powder residue around the toilet lid, and there was a razor blade in the toilet bowl, was insufficient to meet the requirement that defendant be found in the act of either selling or attempting to sell a controlled substance, and thus the state could not properly seize and condemn currency found in defendant's apartment. *\$9,886.00 U.S. Currency v. State*, 541 So.2d 27 (Ala.Civ.App.1989).

Condemnation and forfeiture of \$750 under this section would be affirmed where it could be reasonably inferred from the evidence that, immediately before the defendant was arrested, he had just sold marijuana for \$550 in marked bills and that he already possessed the \$750 at that time, and where the \$750 could have been kept on hand by defendant for the purpose of making change in drug sales, the \$750 and \$550 were intermingled, and the \$1,300 was hidden at an unusual and abnormal location upon defendant's person. *Houze v. State ex rel. Galanos*, 531 So.2d 916 (Ala.Civ.App.1988).

Vehicle subject to forfeiture. Vehicle owned by the defendant, used to effectuate the illegal sale of 2.5 grams of cocaine by transporting the defendant and his cocaine to the place where the sale was consummated, was subject to forfeiture under this section. *State v. Pudzis*, 507 So.2d 531 (Ala.Civ.App.1987).

Testimony of law enforcement officer was sufficient proof that plaintiff used his 1975 Thunderbird to transport a controlled substance for the purpose of the sale by him of that substance. Accordingly, the vehicle was subject to forfeiture under subdivision (a)(5) of this section. *Tucker v. State*, 445 So.2d 311 (Ala.Civ.App.1984).

Evidence that \$8,694 in cash, a pistol, two pagers and a cellular telephone were found in defendant's car and 4.73 grams of marijuana were found in a plastic bag in defendant's front pocket was insufficient to establish that drug transaction took place or that money was used in drug transaction, as required to support forfeiture of money. *Thompson v. State*, 715 So.2d 224 (Ala.Civ.App.1997), rehearing denied, certiorari denied.

20. Filing fee and costs

State was not required to pay filing fee in order to invoke jurisdiction of trial court; the state is liable for filing fees and court costs in condemnation cases only after a judgment has been rendered in favor of the state, and only where the statute under which the forfeiture is made specifies that the state is to pay such costs. This section provides for the payment of costs involved in seizure and forfeiture, including court costs, from the proceeds of the sale of the property. *Metcalf v. State ex rel. Johnson*, 562 So.2d 276 (Ala.Civ.App.1990).

21. Appointment of counsel

No entitlement to appointed counsel. Actions brought under this section are considered to be civil actions, and, as such claimant was not entitled to appointment of counsel as a matter of right. *\$1,568.00 U.S. Currency v. State*, 612 So.2d 497 (Ala.Civ.App.1992).

Cited in *Kendrick v. State*, 356 So.2d 1222 (Ala. Crim. App.1977); *Walker v. State*, 358 So.2d 800 (Ala. Crim. App.1978); *Carter v. State, Jefferson County*, 465 So.2d 1156 (Ala.Civ.App.1984); *State v. Johnston*, 565 So.2d 262 (Ala. Civ. App.1990) ; \$4,320.00 U.S. Currency in Possession of *Bulger v. State*, 567 So.2d 352 (Ala.Civ.App.1990), reh'g overruled (Ala. Civ. App.); *Robinson v. State*, 587 So.2d 418 (Ala. Civ. App.1991); *Bracey v. State*, 591 So.2d 95 (Ala. Civ. App.1991); *Winters v. State*, 652 So.2d 258 (Ala.1994).

ARTICLE 6. THERAPEUTIC RESEARCH.

§ 20-2-110. Short title. [AL ST SEC 20-2-110]

Current through End of 2003 Organizational Session

This article shall be known as the "Controlled Substances Therapeutic Research Act." (Acts 1979, No. 79-472, p. 870, § 1.)

§ 20-2-111. Legislative findings; cannabis research. [AL ST SEC 20-2-111]

Current through End of 2003 Organizational Session

Annotations

The Legislature finds that recent research has shown that the use of cannabis may alleviate nausea and ill-effects of cancer chemotherapy, and may alleviate the ill-effects of glaucoma. The Legislature further finds that there is a need for further research and experimentation with regard to the use of cannabis under strictly controlled circumstances. It is for these purposes that the Controlled Substances Therapeutic Research Act is hereby established. (Acts 1979, No. 79-472, p. 870, § 2.)

ANNOTATIONS

CASENOTES

1. Classification of marihuana

Marihuana is properly classified with "hard" narcotic drugs. *Isbell v. State*, 428 So.2d 215 (Ala.Crim.App.1983).

Generally, classification of marihuana as narcotic drug has been upheld. *Isbell v. State*, 428 So.2d 215 (Ala.Crim.App.1983).

2. -- Safety and medical use

Marihuana lacks accepted safety and has no accepted medical use. The stated purposes of this article reveal that marihuana lacks accepted safety and has no accepted medical use. *Isbell v. State*, 428 So.2d 215 (Ala.Crim.App.1983).

Although it may be useful in treatment of some conditions. While marihuana may be useful in the treatment of some medical conditions it has not achieved accepted medical use or safety in its prescription and application. *Isbell v. State*, 428 So.2d 215 (Ala.Crim.App.1983).

§ 20-2-112. Definitions. [AL ST SEC 20-2-112]

Current through End of 2003 Organizational Session

Historical Notes

As used in this article the following words, unless the context clearly indicates the contrary, shall have the following meanings:

(1) Controlled substance. The same as is defined in subdivision (5) of Section 20-2-2, as amended;

(2) Cannabis. The same as those substances defined in subdivision (15) of Section 20-2-2, as amended, and particularly those substances defined as tetrahydrocannabinols, or a chemical derivative thereof;

(3) Practitioner. A physician licensed to practice medicine in this state and particularly as herein enumerated.

(Acts 1979, No. 79-472, p. 870, § 3.)

HISTORICAL NOTES

HISTORY

Code Commissioner's Notes

Act 2001-971 redesignated subdivisions (5) and (15) of Section 20-2-2 as subdivisions (4) and (14) respectively.

§ 20-2-113. Controlled Substances Therapeutic Research Program -- Established; review committee; rules and regulations; formulation with federal agencies. [AL ST SEC 20-2-113]

Current through End of 2003 Organizational Session

There is hereby established by the State Board of Medical Examiners the Controlled

Substances Therapeutic Research Program. The board shall administer the program by a review committee. The board shall promulgate such rules and regulations as are necessary for the proper administration and implementation of the program. Such promulgations shall be formulated to consider those pertinent rules and regulations promulgated by the Federal Drug Enforcement Agency, Food and Drug Administration and the National Institute on Drug Abuse.
(Acts 1979, No. 79-472, p. 870, § 4.)

§ 20-2-114. Controlled Substances Therapeutic Research Program -- Limited to cancer chemotherapy and glaucoma patients; certification; exemption from prosecution. [AL ST SEC 20-2-114]

Current through End of 2003 Organizational Session

Except as herein otherwise provided, the Controlled Substances Therapeutic Research Program shall be limited to cancer chemotherapy patients and glaucoma patients, who are certified to the review committee by an authorized practitioner as being in such medical condition necessary for the treatment of glaucoma, or the side effects of chemotherapy in cancer patients; such authorization shall be upon such terms and conditions as may be consistent with the public health and safety. To the extent of the applicable authorization, persons are exempt from prosecution in this state for possession, production, manufacture or delivery of cannabis.
(Acts 1979, No. 79-472, p. 870, § 5.)

§ 20-2-115. Composition of review committee. [AL ST SEC 20-2-115]

Current through End of 2003 Organizational Session

References

The review committee shall consist of: (a) one physician licensed to practice medicine in this state and certified by the American Board of Ophthalmology; (b) one physician licensed to practice medicine in this state, certified by the American Board of Internal Medicine and also certified in the subspecialty of medical oncology; (c) one physician licensed to practice medicine in this state, certified in the specialty of pediatrics and also certified in the subspecialty of pediatrics oncology; (d) one physician licensed to practice medicine in this state, certified in the specialty of gynecology and also certified in the subspecialty of gynecological oncology; (e) one physician licensed to practice medicine in this state, certified in the specialty of radiology and also certified in the subspecialty of radiation oncology; and (f) the director of the Comprehensive Cancer Center of the University of Alabama in Birmingham.
(Acts 1979, No. 79-472, p. 870, § 6.)

REFERENCES

ADMINISTRATIVE CODE

1 Ala. Admin. Code 540-X-9-.02, Board of Medical Examiners; Therapeutic Research

Program.

§ 20-2-116. Certification in subspecialty of oncology required; certification by State Board of Medical Examiners; recertification. [AL ST SEC 20-2-116]

Current through End of 2003 Organizational Session

Only physicians in the practice of medicine as prescribed in Section 20-2-115 and specifically certified by the State Board of Medical Examiners to dispense cannabis under the provisions of this article, shall be practitioners hereunder. Each practitioner shall make application for recertification every three years.

(Acts 1979, No. 79-472, p. 870, § 7; Acts 1981, No. 81-506, p. 869, § 1.)

§ 20-2-117. Contracts for receipt of cannabis; Board of Medical Examiners to promulgate guidelines, rules and regulations. [AL ST SEC 20-2-117]

Current through End of 2003 Organizational Session

The State Board of Medical Examiners may apply to contract with the National Institute of Drug Abuse for receipt of cannabis pursuant to the regulations promulgated by the National Institute on Drug Abuse, the Food and Drug Administration and the Drug Enforcement Administration. The board may formulate and promulgate such guidelines as are necessary for dispensing cannabis consistent with the public health and safety and under strictly controlled circumstances. The board further may establish the rules and regulations requiring accurate reporting and accountability by each practitioner to the board and any federal agency as required by law.

(Acts 1979, No. 79-472, p. 870, § 8; Acts 1981, No. 81-506, p. 869, § 2.)

§ 20-2-118. Annual reports to Governor and Legislature. [AL ST SEC 20-2-118]

Current through End of 2003 Organizational Session

Each year, on or before the fifth day of the Regular Session of the Legislature the State Board of Medical Examiners, in conjunction with the board's review committee, shall report their findings and recommendations to the governor, the president of the Senate and the Speaker of the House of Representatives, regarding the effectiveness of the controlled substances.

(Acts 1979, No. 79-472, p. 870, § 9.)

§ 20-2-119. Enumeration as schedule I or II substance inapplicable. [AL ST SEC 20-2-119]

Current through End of 2003 Organizational Session

The enumeration of cannabis, tetrahydrocannabinols or a chemical derivative thereof as a schedule I or II controlled substance under Article 2 of Chapter 2 of Title 20, as amended, does not apply to the use of such drugs or chemical derivatives thereof

pursuant to the provisions of this article.
(Acts 1979, No. 79-472, p. 870, § 10.)

§ 20-2-120. Penalties. [AL ST SEC 20-2-120]

Current through End of 2003 Organizational Session

Any person or any practitioner who prescribes or dispenses cannabis or any of its derivatives for reasons other than outlined in this article upon conviction thereof shall be guilty of a felony and shall be punished as provided in Section 13A-12-211.

(Acts 1979, No. 79-472, p. 870, § 11.)

ARTICLE 7. IMITATION CONTROLLED SUBSTANCES.

ANNOTATIONS

CASENOTES

Cited in *McCrary v. State*, 429 So. 2d 1121 (Ala. Crim. App. 1982), cert. denied 464 U.S. 91378 L. Ed. 2d 254104 S. Ct. 273.

§ 20-2-140. Short title. [AL ST SEC 20-2-140]

Current through End of 2003 Organizational Session

This article shall be known and may be cited as the Imitation Controlled Substances Act.

(Acts 1982, No. 82-426, p. 670, § 1.)

§ 20-2-141. Definitions. [AL ST SEC 20-2-141]

Current through End of 2003 Organizational Session

As used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) Controlled substance. A substance as defined in Section 20-2-2.

(2) Imitation controlled substance. A substance, other than a legend controlled drug, that is not a controlled substance, which by dosage unit appearance (including color, size, shape and markings), and by representations made, would lead a reasonable person to believe that the substance is a controlled substance. In the cases where the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance" (for example as in the case of a powder or liquid), the court or authority concerned should consider, in addition to all other logically relevant factors, the following factors as related to "representations made" in determining whether the substance is an "imitation controlled substance":

a. Statements made by the owner or anyone else in control of the substance concerning the nature of the substance, its use or effect.

b. Statements made to the recipient that the substance may be resold for an

inordinate profit.

c. Whether the substance is packaged in a manner normally used for illicit controlled substances.

d. Evasive tactics or actions utilized by the owner or person in control of this substance to avoid detection by law enforcement authorities.

e. Prior convictions, if any, of an owner or anyone in control of the substance, under state or federal law related to controlled substances or fraud.

f. The proximity of the substances to controlled substances.

(3) Distribute. The actual, constructive or attempted transfer, delivery, or dispensing to another of an imitation controlled substance.

(4) Manufacture. The production, preparation, compounding, processing, encapsulating, packaging, or repackaging, labeling or relabeling of an imitation controlled substance.

(Acts 1982, No. 82-426, p. 670, § 2; Acts 1983, 2nd Ex. Sess., No. 83-131, p. 137, § 1.)

§ 20-2-142. Legislative intent. [AL ST SEC 20-2-142]

Current through End of 2003 Organizational Session

It is the intent of the Legislature to remove the merchandising of the "imitation controlled substance" or "lookalike drug" from the street corners, school yards, and campuses of our state, not to interfere with the legitimate distribution of "over the counter" formulations used for the treatment of illness dispensed or sold by licensed practitioners.

(Acts 1982, No. 82-426, p. 670, § 6.)

§ 20-2-143. Manufacture, distribution, possession, or advertisement of imitation controlled substances prohibited; penalties; immunity of certain persons from liability. [AL ST SEC 20-2-143]

Current through End of 2003 Organizational Session

References

(a) *Manufacture or distribution.* -- It is unlawful for any person to manufacture, distribute, or possess with intent to distribute or sell an imitation controlled substance. Any person who violates this subsection shall be guilty of a Class A misdemeanor under Title 13A.

(b) *Distribution to a minor.* -- Any person 18 years of age or older who violates subsection (a) of this section by distributing or selling an imitation controlled substance to a person under 18 years of age shall be guilty of a Class C felony under Title 13A.

(c) *Possession.* -- It is unlawful for any person to use or possess with intent to use, an imitation controlled substance. Any person who violates this subsection shall be guilty of a Class C misdemeanor under Title 13A.

(d) *Advertisement.* -- It is unlawful for any person to place in any newspaper, magazine, handbill or other publication, or to post or distribute in any public place, any advertisement or solicitation with reasonable knowledge that the purpose of the

advertisement or solicitation is to promote the distribution or sale of an imitation controlled substance. Any person who violates this subsection shall be guilty of a Class B misdemeanor under Title 13A.

(e) *Immunity.* -- No civil or criminal liability shall be imposed by virtue of this article on any person registered under Chapter 2 of Title 20 who manufactures, distributes, or possesses a placebo, or investigational new drug in the course of professional practice or research.

(Acts 1982, No. 82-426, p. 670, § 3.)

REFERENCES

RESEARCH REFERENCES

Annotations:

Validity, construction, and effect of state statute regulating sale of counterfeit or imitation controlled substances. 84 A.L.R.4th 936.

§ 20-2-144. Exceptions. [AL ST SEC 20-2-144]

Current through End of 2003 Organizational Session

Nothing in this article shall apply to a noncontrolled substance that was initially introduced into commerce prior to the initial introduction into commerce of the controlled substance which it is alleged to imitate.

(Acts 1982, No. 82-426, p. 670, § 7.)

ARTICLE 8. SOLICITATION, ATTEMPT AND CONSPIRACY TO COMMIT CONTROLLED SUBSTANCE CRIME.

§§ 20-2-160 through 20-2-164. Transferred to §§ 13A-12-201 through 13A-12-205 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. [AL ST SEC 20-2-160]

Current through End of 2003 Organizational Session

§§ 20-2-160 through 20-2-164. Transferred to §§ 13A-12-201 through 13A-12-205 by Acts 1988, 1st Ex. Sess., No. 88-918, p. 512, § 2, effective September 30, 1988. [AL ST SEC 20-2-164]

Current through End of 2003 Organizational Session

ARTICLE 9. PRECURSOR CHEMICALS.

§ 20-2-180. Definitions. [AL ST SEC 20-2-180]

Historical Notes

As used in this article and unless otherwise specified, the following terms are defined as follows:

- (1) Board or Board of Pharmacy. The Alabama State Board of Pharmacy.
 - (2) Listed precursor chemical. A chemical substance specifically designated as such by the Alabama State Board of Pharmacy, that, in addition to legitimate uses, is used in the unlawful manufacture of a controlled substance or controlled substances.
 - (3) Person. Any individual, corporation, partnership, association, or other entity which manufactures, sells, transfers, or possesses a listed precursor chemical.
- (Acts 1991, No. 91-589, p. 1085, § 1; Act 2001-971, 3rd Sp. Sess., p. 873, § 2.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2001 amendment, effective September 26, 2001, in subdivision (2) deleted the second and third sentences.

§ 20-2-181. Board to designate by rule listed precursor chemicals; interim list established. [AL ST SEC 20-2-181]

Current through End of 2003 Organizational Session

(a) The Board of Pharmacy shall, within one year of July 29, 1991, designate by rule listed precursor chemicals.

(b) The Board of Pharmacy may subsequently by rule add chemicals as listed precursor chemicals following the criteria set forth in subdivision (2) of Section 20-2-180, and may also by rule delete any substance previously named as a listed precursor chemical. In no event shall a chemical also be designated as a listed precursor chemical if it has been determined to be a controlled substance or an immediate precursor chemical pursuant to the Alabama Uniform Controlled Substances Act, Section 20-2-1 et seq.

(c) If any chemical is designated or deleted as a listed precursor chemical under federal law and notice thereof is given to the Board of Pharmacy, the board shall similarly list or delete the substance under this article after the expiration of 30 days from publication in the federal register of a final rule or order designating or deleting such substance as a listed precursor chemical, unless, within 30 days from publication in the federal register of the final rule or order, the board objects to the designation or deletion. In that case, the board shall publish the reasons for objection in the Alabama Administrative Monthly and shall afford all interested parties an opportunity to submit written comments and to be heard. At the conclusion of the hearing and the comment period, the State Board of Pharmacy shall publish its decision, which shall be final unless altered by statute. Upon publication of an objection to the designation or deletion by the board, the designation or deletion is stayed until the board publishes its decision. Notwithstanding the provisions of the Alabama Administrative Procedure Act, Sections 41-22-1 through 41-22-27, no further rulemaking or administrative proceedings shall be

required of the board with respect to the designation or deletion of substances similarly designated or deleted under federal law.

(d) Until the Board of Pharmacy adopts a rule designating listed precursor chemicals, as required by subsection (a), the following chemicals or substances are hereby deemed listed precursor chemicals:

- (1) Acetic anhydride;
- (2) Anthranilic acid and its salts;
- (3) Benzyl cyanide;
- (4) Ephedrine, its salts, optical isomers, and salts of optical isomers;
- (5) Ergonovine and its salts;
- (6) Ergotamine and its salts;
- (7) Hydriodic acid;
- (8) Isosafrol;
- (9) Methylamine;
- (10) N-Acetylanthranilic acid and its salts;
- (11) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (12) Phenylacetic acid and its salts;
- (13) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers;
- (14) Piperidine and its salts;
- (15) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (16) Safrole; and
- (17) 3,4-Methylenedioxyphenyl-2-propanone.

(Acts 1991, No. 91-589, p. 1085, § 2.)

§ 20-2-182. License required for furnishing listed precursor chemical; licensing procedure; content of license; record of transactions. [AL ST SEC 20-2-182]

Current through End of 2003 Organizational Session

(a) A manufacturer, wholesaler, retailer, or other person who sells, transfers, manufactures, purchases for resale, or otherwise furnishes any listed precursor chemical defined in Section 20-2-181 must first obtain a license annually from the Board of Pharmacy.

(b) The procedure for obtaining a license to sell, transfer, manufacture, purchase for resale, or otherwise furnish a listed precursor chemical shall be as follows:

- (1) Obtain an application from the Board of Pharmacy;
- (2) Submit the application to the Board of Pharmacy;
- (3) Demonstrate a legitimate reason to sell, transfer, or otherwise furnish listed precursor chemicals.

(c) The content of the application for a license shall include, but not be limited to, the following information:

- (1) Name of business;
- (2) Address of business other than a post office box number;
- (3) Phone number of business;
- (4) Names and addresses of business owners;
- (5) Location of storage facility;
- (6) Identification of listed precursor chemicals to be sold; and

- (7) Criminal history of applicant.
- (d) A licensee shall make an accurate and legible record of any transaction of listed precursor chemicals and maintain such record together with the following records for a period of at least two years:
- (1) Inventory on hand;
 - (2) Purchase receipts;
 - (3) Manufacturing records including the date and quantity of any listed precursor chemicals manufactured, the quantity of listed precursor chemicals used in manufacturing any other substance or product, and the inventory on hand of listed precursor chemicals after the manufacturing of any other substance or product;
 - (4) Copies of the Board of Pharmacy licenses or permits;
 - (5) Records of substance disposal.
- (Acts 1991, No. 91-589, p. 1085, § 3.)

§ 20-2-183. Permit for possession; requirements to receive permit; copies. [AL ST SEC 20-2-183]

Current through End of 2003 Organizational Session

(a) Any person having a legitimate need for using a listed precursor chemical defined in Section 20-2-181, shall apply in person to the board of pharmacy for a permit to possess such chemical each time said chemical is obtained.

(b) The following must be submitted in person to the Board of Pharmacy to receive a permit for possession of listed precursor chemicals:

(1) A driver's license number or other personal identification certificate number, date of birth, residential or mailing address, other than a post office box number, and a driver's license or personal identification card issued by the Department of Public Safety which contains a photograph of the recipient;

(2) In the event the applicant is a corporation, the information in this section shall be required of the person making application for the permit. In addition, the person making application for the permit on behalf of a corporation shall disclose his relationship to the corporation;

(3) The make, model, model year, state where licensed, and license number of the motor vehicle owned and operated by the recipient;

(4) The serial number of the permit issued in the name of the recipient by the Board of Pharmacy pursuant to this section, which shall be obtained from personal observation of the permit;

(5) A complete description of how the chemical is to be used; and

(6) The location where the chemical is to be stored and used.

(c) The permit shall consist of three parts, including:

(1) The original to be retained by the Board of Pharmacy;

(2) A copy to be retained by the manufacturer, wholesaler, retailer, or other person furnishing listed precursor chemicals; and

(3) A copy to be attached to the container of the listed precursor chemical and to be kept with the chemicals at all times.

(Acts 1991, No. 91-589, p. 1085, § 4.)

§ 20-2-184. Denial, suspension or revocation of license. [AL ST SEC 20-2-184]

Current through End of 2003 Organizational Session

A license or permit, obtained pursuant to Section 20-2-182 or 20-2-183, shall be denied, suspended, or revoked by the Board of Pharmacy upon finding that the license or permit holder has:

- (1) Furnished false or fraudulent material information in any application filed under this article;
- (2) Been convicted of a crime under any state or federal law relating to any controlled substance;
- (3) Had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;
- (4) Violated the provisions of Chapter 23 of Title 34; or
- (5) Failed to maintain effective controls against the diversion of said precursors to unauthorized persons or entities.

(Acts 1991, No. 91-589, p. 1085, § 5.)

§ 20-2-185. Reporting transactions -- Board to supply form. [AL ST SEC 20-2-185]

Current through End of 2003 Organizational Session

(a) Any person who sells, transfers, purchases for resale, or otherwise furnishes to a person in this state a listed precursor chemical shall submit a report of the transaction on a form obtained from the Board of Pharmacy that includes the information required by Section 20-2-183.

(b) The Board of Pharmacy shall supply, upon the request of any manufacturer, wholesaler, retailer, or other person who sells, transfers, purchases for resale, or otherwise furnishes a listed precursor chemical a form for the submission of:

- (1) The report required by subsection (a);
- (2) The name and measured amount of the listed precursor chemical delivered;
- (3) Such other information as the board may require pursuant to agency rule of the Board of Pharmacy.

(Acts 1991, No. 91-589, p. 1085, § 6.)

§ 20-2-186. Procedure upon discovery of loss or theft of chemicals -- Records -- Audits and inspections of records. [AL ST SEC 20-2-186]

Current through End of 2003 Organizational Session

(a) Any person, licensed or permitted, who discovers a loss or theft of, or disposes of a chemical listed in Section 20-2-181 shall:

- (1) Submit a report of the loss, theft, or disposal to the Board of Pharmacy no later than the third business day after the date the manufacturer, wholesaler, retailer, or other person discovers the loss or theft, or after the actual disposal; and
- (2) Include the amount of loss, theft, or disposal in the report. Any disposal of listed precursor chemicals must be done in accordance with the rules and regulations of the United States Environmental Protection Administration and shall be performed

at the expense of the permit or license holder.

(b) A manufacturer, wholesaler, retailer, or other person who sells, transfers, possesses, uses, or otherwise furnishes any listed precursor chemical shall:

(1) Maintain records as specified in Section 20-2-182, or as prescribed by the rule of the Board of Pharmacy;

(2) Permit law enforcement authorities to conduct on-site audits, inspections or inventories, and inspect all records made in accordance with this article at any reasonable time; and

(3) Cooperate with the audit, inspection or inventory, or copying of any records.
(Acts 1991, No. 91-589, p. 1085, § 7.)

§ 20-2-187. Adoption of rules; administrative fees authorized. [AL ST SEC 20-2-187]

Current through End of 2003 Organizational Session

The Board of Pharmacy may adopt reasonable rules to effectuate the provisions of this article. The board is further authorized to charge reasonable fees to defray expenses incurred in issuing any licenses or permits or maintaining any records or forms required by this article and in the administration of the provisions of this article. Any fees to defray expenses as set forth above or in administering the provisions of this article shall be retained by the Board of Pharmacy.

(Acts 1991, No. 91-589, p. 1085, § 8.)

§ 20-2-188. Exceptions to requirements for sale or transfer of chemicals, and to licensing requirements. [AL ST SEC 20-2-188]

Current through End of 2003 Organizational Session

(a) The provisions of this article shall not apply to the sale or transfer of products which include a listed precursor chemical if the product may be sold lawfully with a prescription or over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. section 301 et seq.), or under a rule adopted pursuant to that act.

(b) Notwithstanding any other provision of this article, no person shall be required to obtain a listed precursor license or permit for the sale, receipt, transfer, manufacture, or possession of a listed precursor chemical when:

(1) Such person is a duly licensed physician, dentist, veterinarian, podiatrist, or pharmacist, when the sale, receipt, transfer, manufacture, or possession of such listed precursor chemical is a transaction otherwise lawfully authorized;

(2) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person;

(3) A delivery of a listed precursor chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman.

(Acts 1991, No. 91-589, p. 1085, § 9.)

§ 20-2-189. Property rights in chemicals forfeited upon violation. [AL ST SEC 20-2-189]

Current through End of 2003 Organizational Session

All listed precursor chemicals as defined in Section 20-2-181, which have been, or which are intended to be sold, transferred, manufactured, purchased for resale, possessed or otherwise transferred in violation of a provision of this article shall be subject to forfeiture to the state and no property right shall exist in them.

(Acts 1991, No. 91-589, p. 1085, § 10.)

§ 20-2-190. Penalties. [AL ST SEC 20-2-190]

Current through End of 2003 Organizational Session

(a) Any person who manufactures, sells, transfers, receives or possesses a listed precursor chemical violates this article if the person:

- (1) Knowingly fails to comply with the reporting requirements of this article;
- (2) Knowingly makes a false statement in a report or record required by this article or the rules adopted thereunder;
- (3) Is required by this article to have a listed precursor chemical license or permit, and is a person as defined by this article, and knowingly or deliberately fails to obtain such a license or permit. An offense under this subsection shall constitute a Class C felony.

(b) A person who possesses, sells, transfers, or otherwise furnishes a listed precursor chemical commits an offense if the person possesses, sells, transfers, or furnishes the substance with the knowledge or intent that the substance will be used in the unlawful manufacture of a controlled substance. An offense under this subsection shall constitute a Class B felony.

(Acts 1991, No. 91-589, p. 1085, § 11.)



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